PB82-237595

Financial Assurance for Closure and Post-Closure Care: Requirements for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

ICF, Inc.
Washington, DC

Prepared for

Environmental Protection Agency
Washington, DC

May 82

U.S. Department of Commerce
National Technical Information Service
NTIS

50272-101

REPORT DOCUMENTATION PAGE

1. REPORT NO.
SW-955

2.

3. Recipient's Accession No
PB82-237595

4. Title and Subtitle
Financial Assurance for Closure and Post-Closure Care: Requirements for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

5. Report Date
May 1982

6.

7. Author(s)
ICF, Inc.

8. Performing Organization Rept. No.

9. Performing Organization Name and Address
ICF, Inc.
1850 K Street, N.W.
Suite 950
Washington, DC 20006

10. Project/Task/Work Unit No.

11. Contract(C) or Grant(G) No
(C) 68-01-6491
(G)

12. Sponsoring Organization Name and Address
Environmental Protection Agency
Office of Solid Waste
401 M Street, S.W.
Washington, DC 20460

13. Type of Report & Period Covered
Guidance Manual

14.

15. Supplementary Notes

16. Abstract (Limit: 200 words)

Guidance to owners and operators for complying with the requirements for financial assurance of closure and post-closure care (RCRA, Subpart H); and to EPA Regional staff for implementing the requirements.

17. Document Analysis a. Descriptors

b. Identifiers/Open-Ended Terms
closure/post-closure
financial assurance/financial requirements
Resource Conservation and Recovery Act (RCRA)

c. COSATI Field/Group

18. Availability Statement:

19. Security Class (This Report)

20. Security Class (This Page)

21. No. of Pages

22. Price

(See ANSI–Z39.18)

See Instructions on Reverse

OPTIONAL FORM 272 (4–77)
(Formerly NTIS-35)
Department of Commerce

United States
Environmental Protection
Agency

Office of Solid Waste
and Emergency Response

May 1982
SW - 955

PB82-237595

Solid Waste

EPA

Financial Assurance for Closure and Post-Closure Care:

Requirements for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

A Guidance Manual

REPRODUCED BY
NATIONAL TECHNICAL
INFORMATION SERVICE
U.S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA. 22161

FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE: REQUIREMENTS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

A GUIDANCE MANUAL

This document (SW-955) was prepared for the
Office of Solid Waste under contact no. 68-01-6491

U.S. Environmental Protection Agency
1982

PREFACE

This manual was prepared by ICF, Inc., 1850 K Street, N.W., Suite 950, Washington, DC 20006, under EPA Contract No. 68-01-6491. The EPA project officer was Carole J. Ansheles.

This document was compiled in order to provide guidance to owners and operators in complying with the requirements for financial assurance of closure and post-closure care; and to EPA Regional staff in implementing the requirements.

This document has received Information Clearance No. 2000-0445 from the Office of Management and Budget, for use through December 31, 1983.

Preceding page blank

SUMMARY TABLE OF CONTENTS

Page

I. INTRODUCTION I-1

II. OVERVIEW OF FINANCIAL REQUIREMENTS II-1

III. ESTABLISHING FINANCIAL RESPONSIBILITY USING TRUST FUNDS III-1

IV. ESTABLISHING FINANCIAL RESPONSIBILITY USING SURETY BONDS IV-1

V. ESTABLISHING FINANCIAL RESPONSIBILITY USING LETTERS OF CREDIT V-1

VI. ESTABLISHING FINANCIAL RESPONSIBILITY USING INSURANCE VI-1

VII. ESTABLISHING FINANCIAL RESPONSIBILITY USING THE FINANCIAL TEST OR CORPORATE GUARANTEE VII-1

VIII. ESTABLISHING FINANCIAL RESPONSIBILITY USING STATE MECHANISMS . VIII-1

GLOSSARY OF TERMS

APPENDIX A: EPA Regional Office Financial Requirements Contacts and Other Federal Regulatory Agencies A-1

APPENDIX B: State Agencies and Boards B-1

Preceding page blank

DETAILED TABLE OF CONTENTS

Page

I. INTRODUCTION I-1

- A. ORGANIZATION OF MANUAL I-1
- B. BACKGROUND I-2
- C. PURPOSE I-3
- D. OWNER OR OPERATOR RESPONSIBILITIES I-3
- E. EPA HEADQUARTERS ROLE I-4
- F. RELATIONSHIP BETWEEN STATE AND FEDERAL REQUIREMENTS I-5
- G. SOURCES OF FURTHER INFORMATION I-9

II. OVERVIEW OF FINANCIAL REQUIREMENTS II-1

- A. OVERVIEW OF RESPONSIBILITIES II-1
  - 1. Owner or Operator Responsibilities II-1
  - 2. Regional Office Responsibilities II-2
  - 3. Financial Institution or Parent Guarantor II-3
- B. FINANCIAL ASSURANCE OPTIONS II-3
  - 1. Summary of Different Mechanisms II-3
  - 2. Using Combinations of Mechanisms and Covering Multiple Facilities II-7
- C. QUALIFICATIONS FOR FINANCIAL INSTITUTIONS AND PARENT GUARANTORS II-8
- D. INITIAL SUBMISSIONS .... II- 8
  - 1. Form and Amount of Financial Assurance II-10
  - 2. Obtaining Financial Assurance II-11
- E. SUBSEQUENT RESPONSIBIITIES FOR UPDATING AND MAINTAINING COVERAGE II-12
  - 1. Updating Coverage II-12
  - 2. Maintaining Assurance II-13
  - 3. Cancellations II-13
  - 4. Changing Mechanisms Voluntarily II-14
- F. DRAWING ON FUNDS II-14
- G. RELEASE FROM RCRA FINANCIAL REQUIREMENTS II-15

Preceding page blank

DETAILED TABLE OF CONTENTS (continued)

Page

H. DIFFERENCES BETWEEN REQUIREMENTS FOR INTERIM STATUS AND PERMITTED FACILITIES II-16

I. USE OF THE HAZARDOUS WASTE DATA MANAGEMENT SYSTEM II-17

J. ATTACHMENTS II-20

- Attachment II-1: Summary of Owner or Operator Responsibilities II-20
- Attachment II-2: Summary of Regional Office Responsibilities II-21

III. ESTABLISHING FINANCIAL RESPONSIBILITY USING TRUST FUNDS III-1

A. INTRODUCTION III-1

B. RCRA TRUST FUND REQUIREMENTS III-2

- Initial Responsibilities of the Owner or Operator III-2

  1. Qualifications for Trustee III-2
  2. Wording and Amount of Assurance III-2
  3. Establishing a Trust Fund III-4
  4. Submission of Documents to EPA III-6

- Subsequent Responsibilities of the Owner or Operator III-6

  5. Updating the Trust Fund III-6
  6. Maintaining Assurance III-7
  7. Role of Trustee III-8
  8. Drawing on the Trust Fund III-9
  9. Termination of the Trust Fund III-9

- Permitted Facilities III-9

C. REGIONAL OFFICE RESPONSIBILITIES III-10

- Reviewing Initial Submissions III-10

  1. Qualifications of Trustee III-10
  2. Conformity to Other Requirements III-10
  3. Recordkeeping and Tracking Systems III-11

- Subsequent Responsibilities III-11

DETAILED TABLE OF CONTENTS (continued)

Page

4. Updating the Trust Fund III-11
5. Maintaining the Trust Fund III-12
6. Drawing on the Trust Fund III-12
7. Requests to Terminate the Trust Fund III-13

- Permitted Facilities III-13

D. SOURCES OF FURTHER INFORMATION III-13

E. ATTACHMENTS III-16

- Attachment III-1: RCRA Trust Fund Checklist for Owners or Operators III-16
- Attachment III-2: RCRA Trust Fund Checklist for Regional Offices III-18
- Attachment III-3: Required Wording for RCRA Trust Fund Agreement III-21
- Attachment III-4: Sample Calculations of Required Payments into RCRA Trust Fund III-31

IV. ESTABLISHING FINANCIAL RESPONSIBILITY USING SURETY BONDS IV-1

A. INTRODUCTION IV-1

B. RCRA SURETY BOND REQUIREMENTS IV-3

- Initial Responsibilities of the Owner or Operator................................... IV-3

1. Qualifications for Surety Company IV-3
2. Wording and Amount of Assurance IV-3
3. Obtaining a Surety Bond IV-4
4. Submission of Documents to EPA IV-5

- Subsequent Responsibilities of the Owner or Operator................................... IV-5

5. Updating Coverage IV-5
6. Maintaining Assurance IV-6
7. Cancellation of the Surety Bond IV-6
8. Drawing on Funds for Closure and Post-Closure IV-6
9. Termination of Bond IV-7

- Permitted Facilities IV-7

DETAILED TABLE OF CONTENTS (continued)

Page

C. REGIONAL OFFICE RESPONSIBILITIES IV-8

- Reviewing Initial Submissions IV-8
    1. Qualifications of Surety and Broker or Agent IV-8
    2. Conformity to Other Requirements IV-9
    3. Recordkeeping and Tracking Systems IV-9
- Subsequent Responsibilities IV-9
    4. Updating Surety Bonds IV-9
    5. Maintaining Assurance IV-10
    6. Cancellation of the Surety Bond by the Issurer ... IV-10
    7. Drawing on the Surety Bond IV-10
    8. Request to Terminate the Surety Bond IV-11
- Permitted Facilities IV-11

D. SOURCES OF FURTHER INFORMATION IV-12

E. ATTACHMENTS IV-14

- Attachment IV-1: RCRA Surety Bond Checklist for Owners or Operators IV-14
- Attachment IV-2: RCRA Surety Bond Checklist for Regional Offices IV-16
- Attachment IV-3: Required Wording for RCRA Financial Guarantee Bond IV-18
- Attachment IV-4: Required Wording for RCRA Performance Bond IV-22

V. ESTABLISHING FINANCIAL RESPONSIBILITY USING LETTERS OF CREDIT V-1

A. INTRODUCTION V-1

B. REQUIREMENTS FOR USING RCRA LETTERS OF CREDIT V-2

- Initial Responsibilities of the Owner or Operator.................................. V-2
    1. Qualifications for Issuing Institution V-2
    2. Wording and Amount of Assurance V-2
    3. Obtaining a Letter of Credit V-4
    4. Submission of Documents to EPA V-5

DETAILED TABLE OF CONTENTS (continued)

Page

- Subsequent Responsibilities of the Owner or Operator V-5

  5. Updating Coverage V-5
  6. Maintaining Assurance V-5
  7. Cancellation or Non-Renewal of the Letter of Credit by the Issuer V-6
  8. Drawing on Funds for Closure or Post-Closure V-6
  9. Termination of Letter of Credit V-6

- Permitted Facility Requirements V-6

C. REGIONAL OFFICE RESPONSIBILITIES V-7

- Reviewing Initial Submissions V-7

  1. Qualifications of Issuers V-7
  2. Conformity to Other Requirements V-7
  3. Recordkeeping and Tracking Systems V-8

- Subsequent Responsibilities V-8

  4. Updating Coverage V-8
  5. Maintaining Assurance V-8
  6. Nonrenewal by Issuer V-9
  7. Drawing on Funds for Closure or Post-Closure V-9
  8. Request to Terminate the Letter of Credit V-10

- Permitted Facility Requirements V-10

D. SOURCES OF FURTHER INFORMATION V-10

E. ATTACHMENTS V-12

- Attachment V-1: RCRA Letter of Credit Checklist for Owners or Operators V-12
- Attachment V-2: RCRA Letter of Credit Checklist for Regional Offices V-14
- Attachment V-3: Required Wording for Irrevocable RCRA Letter of Credit V-16

VI. ESTABLISHING FINANCIAL RESPONSIBILITY USING INSURANCE VI-1

A. INTRODUCTION VI-1

B. RCRA INSURANCE REQUIREMENTS VI-2

DETAILED TABLE OF CONTENTS (continued)

Page

- Initial Responsibilities of the Owner or Operator VI-2
    1. Qualifications of Insurer VI-2
    2. Form and Amount of Assurance VI-2
    3. Obtaining an Insurance Contract VI-3
    4. Submission of Documents to EPA VI-3
- Subsequent Responsibilities of the Owner or Operator VI-4
    5. Updating Coverage VI-4
    6. Maintaining Coverage VI-4
    7. Cancellation of the Insurance Policy VI-4
    8. Drawing on Funds for Closure or Post-Closure VI-5
    9. Termination of the Policy by the Owner or Operator VI-5
- Permitted Facilities VI-6

C. REGIONAL OFFICE RESPONSIBILITIES VI-6

- Reviewing Initial Submissions VI-6
    1. Qualifications of Insurer VI-6
    2. Conformity to Other Requirements VI-6
    3. Recordkeeping and Tracking Systems VI-7
- Subsequent Responsibilities VI-7
    4. Updating Coverage VI-7
    5. Maintaining Assurance VI-7
    6. Cancellation of Insurance Contracts by the Insurer VI-8
    7. Drawing on Funds for Closure or Post-Closure VI-9
    8. Request to Terminate Insurance Coverage VI-9
- Requirements for Permitted Facilities VI-9

D. SOURCES OF FURTHER INFORMATION VI-9

E. ATTACHMENTS VI-12

DETAILED TABLE OF CONTENTS (continued)

Page

- Attachment VI-1: RCRA Insurance Contract Checklist for Owners or Operators VI-12
- Attachment VI-2: RCRA Insurance Contract Checklist for Regional Offices VI-14
- Attachment VI-3: Required Wording for RCRA Insurance Certificate VI-16

VII. ESTABLISHING FINANCIAL RESPONSIBILITY USING THE FINANCIAL TEST OR CORPORATE GUARANTEE VII-1

A. INTRODUCTION VII-1

B. REQUIREMENTS OF THE FINANCIAL TEST VII-2

- Initial Responsibilities of the Owner or Operator.................................... VII-2

  1. Qualifications for the Financial Test VII-2
  2. Obtaining the Financial Test and Corporate Guarantee VII-3
  3. Submission of Documents to EPA.................... VII-3

- Subsequent Responsibilities of the Owner or Operator.................................... VII-6

  4. Updating Assurance VII-6
  5. Maintaining Assurance VII-7
  6. Cancelling Corporate Guarantee VII-8
  7. Drawing on Funds for Closure or Post-Closure VII-8
  8. Termination of the Corporate Guarantee VII-8

- Permitted Facility Requirements VII-8

C. REGIONAL OFFICE RESPONSIBILITIES VII-9

- Reviewing Initial Submissions VII-9

  1. Qualifications of Accountant and Parent Guarantor VII-9
  2. Conformity to Other Requirements VII-9
  3. Recordkeeping and Tracking Systems VII-12

- Subsequent Responsibilities VII-15

DETAILED TABLE OF CONTENTS (continued)

Page

4. Updating Coverage VII-15
5. Maintaining Assurance VII-15
6. Cancelling the Corporate Guarantee VII-16
7. Drawing on Funds for Closure Post-Closure VII-16
8. Requests to Terminate the Corporate Guarantee VII-16

D. SOURCES OF FURTHER INFORMATION VII-17

E. ATTACHMENTS VII-19

- Attachment VII-1: RCRA Financial Test Checklist for Owners or Operators VII-19
- Attachment VII-2: Required Wording for Letter from Chief Financial Officer VII-21
- Attachment VII-3: Required Wording for Corporate Guarantee.. VII-26
- Attachment VII-4: RCRA Financial Test Checklist for Regional Offices VII-29
- Attachment VII-5: Examples of Unqualified Opinions VII-31
- Attachment VII-6: Example of an Adverse Opinion VII-33
- Attachment VII-7: Example of a Disclaimer of Opinion VII-34
- Attachment VII-8: Examples of a "Subject To" Qualified Opinion Based on a "Going Concern" Issue VII-35
- Attachment VII-9: Example of an "Except For" Qualified Opinion Due to a Scope Limitation VII-37
- Attachment VII-10: Example of an "Except For" Qualified Opinion Due to Variances from Generally Accepted Accounting Principles VII-38
- Attachment VII-11: Examples of an "Except For" Qualified Opinion Due to Inconsistencies in a Company's Application of Generally Accepted Accounting Principles VII-39
- Attachment VII-12: Example of a "Subject To" Qualified Opinion Due to an Uncertainty Regarding the Outcome of a Judicial Proceeding VII-40
- Attachment VII-13: Example of a "Subject To" Qualified Opinion Due to a Company Without An Operating History VII-41
- Attachment VII-14: Conditions Likely to Result in a Qualified Opinion, Adverse Opinion, and Disclaimer of Opinion VII-42

DETAILED TABLE OF CONTENTS (continued)

Page

- Attachment VII-15: Example of Auditor's Special Report, Confirmation of Chief Financial Officer's Letter VII-43

VIII. ESTABLISHING FINANCIAL RESPONSIBILITY USING STATE MECHANISMS . VIII-1

A. INTRODUCTION VIII-1

B. REQUIREMENTS FOR USING STATE MECHANISMS AND STATE ASSUMPTIONS OF RESPONSIBIITY TO SATISFY RCRA REQUIREMENTS VIII-2

1. Satisfying State Requirements VIII-2
2. Submission of Required Information VIII-2
3. Satisfying Federal Requirements VIII-4
4. Maintaining Coverage VIII-4

C. REGIONAL OFFICE RESPONSIBILITIES VIII-5

1. Evaluating Equivalency VIII-5
2. Reviewing Submissions VIII-7
3. Verifying Conformity to Requirements VIII-8
4. Ensuring Maintenance of Coverage VIII-8

D. SOURCES OF FURTHER INFORMATION VIII-8

E. ATTACHMENTS VIII-9

- Attachment VIII-1: RCRA State Mechanisms Checklist for Owners or Operators VIII-9
- Attachment VIII-2: RCRA State Mechanisms Checklist for Regional Offices VIII-10
- Attachment VIII-3: Sample Owner or Operator Request Letter (I) VIII-13
- Attachment VIII-4: Sample Owner or Operator Request Letter (II) VIII-15
- Attachment VIII-5: Sample Owner or Operator Request Letter (III) VIII-16

GLOSSARY OF TERMS

APPENDIX A: EPA Regional Office Contacts A-1

APPENDIX B: State Regulatory Authorities B-1

LIST OF EXHIBITS

Page

I. INTRODUCTION

EXHIBIT I-1: STATES WITH INTERIM AUTHORIZATION AS OF MAY 10, 1982 .... I-6
EXHIBIT I-2: WHERE TO SEND FINANCIAL REQUIREMENTS DOCUMENTS FOR FACILITIES WITH INTERIM STATUS I-7
EXHIBIT I-3: CLOSURE AND POST-CLOSURE REGULATIONS I-9
EXHIBIT I-4: FEDERAL REGISTER CITATIONS FOR CLOSURE AND POST-CLOSURE REGULATIONS I-10
EXHIBIT I-5: CURRENT BACKGROUND DOCUMENTS OR GUIDANCE I-12

II. OVERVIEW OF FINANCIAL REQUIREMENTS

EXHIBIT II-1: FINANCIAL ASSURANCE MECHANISMS REGULATIONS ... II-4
EXHIBIT II-2: OVERVIEW OF FINANCIAL REQUIREMENTS REGULATIONS II-5
EXHIBIT II-3: QUALIFICATIONS FOR FINANCIAL INSTITUTIONS AND PARENT GUARANTORS II-9

III. ESTABLISHING FINANCIAL RESPONSIBILITY USING TRUST FUNDS

EXHIBIT III-1: RCRA TRUST FUND REGULATIONS III-1
EXHIBIT III-2: RCRA TRUST FUND: REGULATORY AUTHORITIES FOR FINANCIAL INSTITUTIONS III-3

IV. ESTABLISHING FINANCIAL RESPONSIBILITY USING SURETY BONDS

EXHIBIT IV-1: RCRA SURETY BOND REGULATIONS IV-2

V. ESTABLISHING FINANCIAL RESPONSIBILITY USING LETTERS OF CREDIT

EXHIBIT V-1: RCRA LETTER OF CREDIT REGULATIONS V-1
EXHIBIT V-2: LETTER OF CREDIT: REGULATORY AUTHORITIES FOR FINANCIAL INSTITUTIONS V-3

VI. ESTABLISHING FINANCIAL RESPONSIBILITY USING INSURANCE

EXHIBIT VI-1: RCRA INSURANCE REGULATIONS VI-1

LIST OF EXHIBITS (continued)

Page

VII. ESTABLISHING FINANCIAL RESPONSIBILITY USING THE FINANCIAL TEST

EXHIBIT VII-1: RCRA FINANCIAL TEST REGULATIONS VII-2
EXHIBIT VII-2: ALTERNATIVE FINANCIAL TESTS VII-4
EXHIBIT VII-3: SAMPLE FILE ON OWNER, OPERATOR, OR CORPORATE PARENT VII-13

VIII. ESTABLISHING FINANCIAL RESPONSIBILITY USING STATE MECHANISMS

EXHIBIT VIII-1: RCRA STATE MECHANISM REGULATIONS VIII-1
EXHIBIT VIII-2: STATE FINANCIAL REQUIREMENTS AND ASSUMPTIONS OF RESPONSIBILITY IN STATES WITHOUT INTERIM AUTHORIZATION AS OF MAY 10, 1982 .... VIII-3

I. INTRODUCTION

A. ORGANIZATION OF MANUAL

This manual is organized to communicate information necessary to ensure that adequate financial responsibility is provided for the proper closure and post-closure care of hazardous waste facilities. This introduction provides a general background for understanding the financial requirements and how the manual is organized. It is followed by an overview of the requirements themselves in Chapter II. The overview outlines general responsibilities applicable to all financial assurance mechanisms. The following chapters focus on the specific mechanisms in the order of their appearance in EPA regulations:

Chapter III	Trust Funds
Chapter IV	Surety Bonds
Chapter V	Letters of Credit
Chapter VI	Insurance
Chapter VII	Financial Test and Corporate Guarantee
Chapter VIII	State-Required Mechanisms and State Assumption of Responsibility

In each of the chapters, the discussion is organized as follows:

A. Overview--Introduces the financial assurance mechanism, highlights key terms and special considerations, and presents the applicable regulations.

B. Requirements of the Mechanism--Explains what must be done by owners or operators and the financial community for EPA to approve use of the mechanism.

C. Regional Office Responsibilities--Describes the activities and functions which EPA Regional Offices will perform.

D. Sources of Further Information--Provides references to useful documents or other sources of information.

E. Attachments--Includes checklists and required wording of instruments.

The manual focuses on the interim status financial requirements of 40 CFR 265 (Subpart H) and includes separate sections which discuss any special requirements for permitted facilities (40 CFR 264).

The appendix to the manual contains a glossary of key terms. Terms included in the glossary will be identified by the use of CAPITAL LETTERS in the first use of the term within each chapter.

B. BACKGROUND

As part of the "cradle to grave" regulation of hazardous wastes under the Resource Conservation and Recovery Act of 1976 (RCRA), EPA has developed standards for:

- proper closure of hazardous waste treatment, storage, and disposal facilities;
- post-closure care and monitoring of disposal facilities such as landfills and surface impoundments; and
- assuring the availability of funds for closure and/or post-closure activities.

These standards require the owner or operator of a hazardous waste facility to develop plans for closure and (if applicable) post-closure, to prepare cost estimates based on those plans, and finally, to demonstrate the ability to pay for closure and/or post-closure. This demonstration must be accomplished by using one or more financial assurance mechanisms specified by EPA. This manual describes how these mechanisms may be used. Other EPA guidance addresses closure and post-closure plans and cost estimates.

The specific requirements which are applicable to an owner or operator depend on:

(1) The type of facility involved, because not all facilities have post-closure obligations and different types of facilities may have different closure requirements;

(2) The status of the facility involved, because the rules distinguish between existing facilities with "interim status" (40 CFR 265) and facilities which are operating under a RCRA permit (40 CFR 264) and

(3) The state where the facility is located, because many states are in the process of being authorized to administer their own hazardous waste programs and may be promulgating rules that are not identical to federal EPA requirements.

"Sources of Further Information" (included at the end of this chapter) outlines how these rules appear in the Code of Federal Regulations (CFR), the dates of publication in the Federal Register, and the appropriate EPA Guidance Manuals on RCRA closure and post-closure requirements (See Exhibits I-3 through I-5). This introduction includes a discussion of owner or operator responsibilities as well as an explanation of the relationship between state and federal requirements.

C. PURPOSE

This manual has three primary purposes:

(1) To assist owners, operators, and the financial community in understanding their responsibilities and fulfilling requirements in a timely fashion;

(2) To assist Regional Administrators in developing effective procedures to implement the requirements; and

(3) To promote uniform and coordinated implementation within and among Regions to ease the burden on owners or operators, the financial community, and EPA personnel.

To accomplish these goals, the manual describes the responsibilities of the regulated community, the tasks that must be performed, and the future contingencies that may arise. Similarly, the manual outlines the functions which Regional Offices must perform and future problems they may encounter. Checklists and sample submissions are provided as well as sources of further information.

D. OWNER OR OPERATOR RESPONSIBILITIES

All hazardous waste management facilities are subject to closure requirements (except for facilities that only store wastes for 90 days or less). However, only disposal facilities where hazardous wastes are to remain after closure are subject to post-closure requirements. (See 40 CFR 265.110.) To satisfy closure and post-closure requirements, owners and operators of hazardous waste facilities must prepare closure and post-closure plans, as applicable, and cost estimates based on those plans. States and the federal government only are exempt from the standards for cost estimates and financial assurance; all other owners and operators must satisfy those requirements as well.

The RCRA financial requirements regulations apply to both the owner and the operator of a hazardous waste management facility. The actual provision of financial assurance, however, may be offered by either the owner or operator. EPA will consider both parties responsible for carrying out the requirements, and leaves it up to the parties themselves to undertake, share, or divide the actual provision of financial assurance.

Owners or operators should be sure to provide their financial institutions with the name and telephone number of the EPA Regional contact, the required wording of instruments included in this manual, as well as copies of the regulations cited in Exhibit II-3. The regulations themselves may be obtained by contacting the RCRA Hotline (800) 424-9346 (toll free) or (202) 382-3000, or the Superintendent of Documents, Washington, D.C. 20402. If financial institutions have questions about specific procedures or issues not covered in the regulations, they may contact the RCRA financial specialist in each EPA Region. See Appendix A.

Until permits have been issued under RCRA, EXISTING FACILITIES are subject to the INTERIM STATUS rules. When a facility receives a RCRA permit, the rules for PERMITTED FACILITIES will apply (See Exhibit I-3). In contrast to other RCRA standards, the financial requirements for interim status and permitted facilities are quite similar. Therefore, the chapters describing the individual financial mechanisms are based on the interim status requirements; however, each chapter includes subsections which detail any provisions unique to permitted facilities.

This guidance document is based on the revised interim final rules on financial requirements for closure and post-closure care published in the Federal Register on April 7, 1982 and effective as of July 6, 1982. These rules have been designed and revised to facilitate the goal of assuring that funds will be available for proper closure and post-closure care of hazardous waste management facilities. EPA Regional Offices have designated personnel to answer questions and provide materials. (See Appendix A-1.) EPA Headquarters may also be consulted through the RCRA HOTLINE (800-424-9346 toll free or 202-382-3000). Appended to each chapter of this manual are other useful sources of further information.

E. EPA HEADQUARTERS ROLE

Because this is a new program, problems may arise that either must be resolved case-by-case or had not been anticipated by the regulations (or this guidance). To assure uniformity of implementation, EPA Regional Offices should communicate with EPA Headquarters to determine if such problems have arisen elsewhere and to discuss options for resolving the questions. Further guidance or memoranda will be distributed by Headquarters as additional issues are resolved. Owners or operators and financial community representatives are also free to contact Headquarters but should initially discuss all questions with the Regional Office staff (see Appendix A) or appropriate state agency (see Appendix B) who have primary responsibility for implementing the requirements and overseeing compliance. (See Section F below.)

As administrative experience with the financial assurance standards accumulates, allocation of responsibility between Headquarters and the Regional Offices for review of compliance may shift in certain circumstances to exploit potential efficiencies. For example, the feasibility of centralizing and automating annual review of financial test data is under investigation. Headquarters currently envisions that the Regional Offices will play the lead role in determining compliance with financial assurance standards. Headquarters will act as a clearinghouse of information and source of technical assistance.

In order to foster unified implementation of the financial requirements, Headquarters will be available to provide guidance on review of financial assurance demonstrations which apply to more than one EPA Region; procedures for coordination with Enforcement; and responses to bankruptcies of owners or operators, their corporate guarantors, and financial institutions.

F. RELATIONSHIP BETWEEN STATE AND FEDERAL REQUIREMENTS

The Resource Conservation and Recovery Act (RCRA) does not prevent states from independently enacting closure or post-closure financial requirements, and a number of states have done so. Moreover, under RCRA, states may apply to EPA for the authority to administer a state hazardous waste management program in lieu of federal implementation of such a program; these states must have financial requirements equivalent to the federal rules to obtain such authorization. Thus, hazardous waste facilities may be subject to state financial requirements and must satisfy applicable rules, whether promulgated as part of an EPA-authorized state program or independently.

In addition to determining what state financial requirements exist (if any), owners or operators must also determine whether facilities are located in states that have received EPA authorization to administer hazardous waste programs in lieu of RCRA. State program authorization typically proceeds in "Phases," prior to final authorization. Thus, as of May 10, 1982, twenty-nine states had received PHASE I INTERIM AUTHORIZATION, including three states which have also received PHASE II INTERIM AUTHORIZATION. See Exhibit I-1. Once a state has received either Phase I or II interim authorization, owners or operators need comply only with whatever state financial assurance requirements exist, if any.

Owners or operators should be aware of how the phases of the state authorization process relate to the RCRA financial requirements. First, to receive Phase I interim authorization, a state need not have established financial assurance requirements. However, such requirements must be established and substantially equivalent to RCRA standards for a state to receive Phase II interim authorization. In either case, interim status facilities are not subject to federal RCRA financial requirements, only such state requirements as exist will apply. Owners or operators should note that Phase II authorization may well establish some additional financial requirements for interim status facilities.

Beyond this, facilities need comply only with permit requirements, whether a permit is State or Federally-issued. If a RCRA permit is issued to a facility in a state that does not have Phase II authorization, federal requirements (40 CFR 264) apply in addition to any independent state permit requirements. States with Phase II authorization may issue permits in lieu of RCRA permits for one or more categories of hazardous waste facilities; federal

EXHIBIT I-1

STATES WITH INTERIM AUTHORIZATION AS OF MAY 10, 1982

Alabama
*Arkansas
California
Connecticut
Delaware
Florida
Georgia
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Mississippi
Montana
New Hampshire
*North Carolina
North Dakota
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
Tennessee
*Texas
Utah
Vermont
Virginia
Wisconsin

---

* These states have received Phase II interim authorization in addition to Phase I.

requirements do not apply to permits issued by a state under Phase II authorization. Of course, such a state must have financial assurance requirements that are substantially equivalent to federal standards.

Exhibit I-1 lists the states with interim authorization as of May 10, 1982. Since some "Phase I" and non-authorized states do have financial requirements, owners and operators should contact the appropriate state agency (see Appendix B) or the EPA Regional Office for more specific information. To the extent that state requirements are similar to RCRA rules, Chapters II through VII of this manual can be used to supplement materials available from state agencies. However, no submissions to EPA Regional Offices are required, and reference to Chapter VIII will not be necessary.

State and/or federal officials may and/or need to review the financial assurance offered by the owner or operator to determine if it satisfies applicable requirements. Whether it is a state and/or Federal agency that is responsible for that determination depends on the authorization status of the state program, and on whether the state has financial responsibility requirements of its own. Exhibit I-2 shows the appropriate authority for review. The owner or operator should therefore ascertain which agency is responsible for review, and submit all documents for review to that agency.

EXHIBIT I-2

WHERE TO SEND FINANCIAL REQUIREMENTS DOCUMENTS FOR FACILITIES WITH INTERIM STATUS

Status of State Program Authorization	Does State Have Its Own Requirements? Yes	No
No Authorization	Send to state and EPA. (Case 1)	Send financial information to EPA only. (Case 2)
Phase I Interim Authorization	Send to state only. (Case 3)	No submission necessary. (Case 4)
Phase II Interim Authorization	Send to state only. (Case 3)	Not applicable

In states with financial requirements but neither Phase I nor Phase II authorization (Case 1), the owner or operator must comply with state financial assurance requirements and submit the assurance for review to the EPA Regional Administrator by the effective date to determine whether the RCRA requirements are satisfied. This is discussed in detail in Chapter VIII.

In states with no financial requirements and no state program authorization (Case 2) the owner or operator need only submit documents to EPA which satisfy federal RCRA requirements, as described in this manual.

In states with closure or post-closure financial requirements and either Phase I or Phase II authorization (Case 3), owners or operators should submit all required financial assurance information to the state program officials only.

In a Phase I state without its own financial requirements (Case 4) owners or operators are not required to submit any financial assurance information. Any information that is required, however, would be submitted to the state. A facility in a Phase I state that applies for a RCRA permit, however, must comply with federal requirements.

In a state which has not received authorization but has financial requirements the satisfaction of state financial requirements may not always satisfy the requirements of federal EPA rules. For example, a state may establish financial requirements based on only ten-to-fifteen years of post-closure care as opposed to the up-to-thirty years (or more) which can be required under the federal system. In these cases, owners or operators may have to provide additional assurance to satisfy federal financial requirements. Where state rules are stricter than federal EPA provisions, no additional financial assurance demonstrations will ordinarily be required. This situation is discussed in Chapter VIII.

G. SOURCES OF FURTHER INFORMATION

EXHIBIT I-3

CLOSURE AND POST-CLOSURE REGULATIONS
40 CFR Parts 264 and 265, Subparts G and H

Facility Status & Type		Closure Plans	Post-Closure Plans	Cost Estimates	Financial Requirements
Storage Treatment and Disposal Facilities	Interim Status	40 CFR 265.112	N/A	40 CFR 265.142	40 CFR 265.143
	Permitted Facility	40 CFR 264.112	N/A	40 CFR 264.142	40 CFR 264.143
Disposal Facilities Only	Interim Status	40 CFR 265.112	40 CFR 265.118	40 CFR 265.144	40 CFR 265.145
	Permitted Facility	40 CFR 264.112	40 CFR 264.118	40 CFR 264.144	40 CFR 264.145

Source: Title 40, Code of Federal Regulations (CFR).

EXHIBIT I-4

FEDERAL REGISTER CITATIONS FOR LATEST CLOSURE AND POST-CLOSURE REGULATIONS

Topic	Regulatory Status	Federal Register
(1) Closure and Post-Closure Plans		
(a) Permitted Facilities	Interim Final	46 FR 2849-2851 January 12, 1981
	Amendment (Minor)	46 FR 7678 January 23, 1981
(b) Interim Status	Revised Interim Final	46 FR 2875-2877 January 12, 1981
(2) Cost Estimates		
(a) Permitted Facilities	Interim Final	46 FR 2802-2847 (Preamble) 46 FR 2851-2852, 2856 (Regulations) January 12, 1981
	Amendment (Minor)	46 FR 7666-7678 (Preamble) 46 FR 7678 (Regulations) January 23, 1981
	Amendment (Minor)	47 FR 15044 (Preamble) 47 FR 15047, 15052 (Regulations) April 7, 1982
(b) Interim Status	Final	45 FR 33154-33220 (Preamble) 45 FR 33243-33244 (Regulations) May 19, 1980
	Amendment/Extension of Time Period	45 FR 72039-72040 October 30, 1980

EXHIBIT I-4 (continued)

FEDERAL REGISTER CITATIONS FOR LATEST CLOSURE AND POST-CLOSURE REGULATIONS

Topic	Regulatory Status	Federal Register
(2) Cost Estimates (b) Interim Status (continued)	Restated	46 FR 2802-2847 (Preamble) 46 FR 2877-2878, 2880-2881 (Regulations) January 12, 1981
	Amendment (Minor)	47 FR 15044 (Preamble) 47 FR 15064, 15069 (Regulations) April 7, 1982
(3) Financial Responsibility Requirements		
(Permitted Facilities and Interim Status)	Revised Interim Final	47 FR 15032-47 (Preamble) 47 FR 15047-74 (Regulations) April 7, 1982
	Corrections to Trust Agreement Wording	47 FR 19995 May 10, 1982

EXHIBIT I-5

CURRENT BACKGROUND DOCUMENTS OR GUIDANCE

40 CFR Parts 264 and 265, Subparts G and H

(1) Closure and Post-Closure Plans	Background Document, Interim Status Standards and General Status Standards for Closure and Post-Closure Care (EPA, December 31, 1980). Closure and Post-Closure: Interim Status Standards (FINAL DRAFT GUIDANCE, November 1981, General Research Corp.).
(2) Cost Estimates	Final Draft Guidance for Subpart H of the Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (FINAL DRAFT GUIDANCE, November 1981, General Research Corporation).
(3) Financial Assurance for Closure and Post-Closure Care	Background Document, Parts 264 and 265, Subpart H, Financial Requirements, Final Regulations (EPA, December 31, 1980). Background Document for the Financial Test and Municipal Revenue Test (EPA, November 30, 1981). Financial Assurance for Closure and Post-Closure Care: Requirements for Owners or Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (GUIDANCE, 1982, ICF Incorporated). See also documents cited in Chapter VII.

II. OVERVIEW OF FINANCIAL REQUIREMENTS

This chapter presents an overview of the RCRA financial assurance requirements, including responsibilities common to all the mechanisms acceptable for compliance. More detailed information about each mechanism is contained in the chapter on that mechanism.

A. OVERVIEW OF RESPONSIBILITIES

This section briefly reviews the major responsibilities of the three parties to most financial assurance mechanisms, the owner or operator, the Regional Office, and the financial institution or parent guarantor. Each of the steps described here is discussed in greater detail in the rest of this chapter. Summary checklists are provided as Attachments II-1 and II-2 at the end of this chapter.

1. Owner or Operator Responsibilities

To select a mechanism for complying with closure and post-closure financial assurance requirements, owners or operators will want to consider such factors as the cost and availability of alternative mechanisms, tax treatment of payments, and effects on balance sheets. Many owners or operators would benefit from an initial discussion with their own bank, accountant, or financial advisor regarding the relative advantages of the different mechanisms for complying with the regulations.

Once the owner or operator decides upon a mechanism for complying with the RCRA financial assurance regulations, it must approach a qualified financial institution or parent and negotiate the terms of the assurance. The financial institution may request detailed information from the owner or operator before the financial assurance deal will be consummated. The owner or operator will have to make sure that the financial assurance mechanism is in the amount and form required by EPA, is signed as required, is in effect at the appropriate time, and is submitted to the Regional Office when required.

During the operating life of the facility and while the financial assurance mechanism is in force, the owner or operator will have to increase the amount of the assurance to take into account cost estimate increases due to inflation or any changes in closure or post-closure plans. The owner or operator may also request from the Regional Administrator a reduction in assurance when cost estimates decrease.

When the financial institution enters bankruptcy or otherwise loses its qualifications to provide assurance under the regulations, the owner or operator must obtain alternative means of financial assurance. When ownership or operating responsibility for the facility is transferred, or a change in the method of assurance is sought, termination of the existing assurance mechanism will only be permitted once substitute financial assurance has otherwise been obtained. When the financial institution or parent guarantor exercises its right to cancel assurance, the owner or operator may have only 90 days to obtain replacement assurance.

When closure begins, the owner or operator may begin submitting itemized bills to the Regional Administrator for reimbursement. When closure is complete and again when post-closure care is complete, the owner or operator will want to apply to the Regional Administrator to be released from financial assurance requirements.

The responsibilities of the owner or operator are summarized in Attachment II-1.

2. Regional Office Responsibilities

The Regional Administrator has the lead responsibility for assisting the owner or operator to understand and comply with the RCRA financial responsibility requirements. The Regional Office must institute procedures for reviewing and administering the financial assurance information submitted by the owners and operators in its region. First, the Regional Office must be certain that the financial institution qualifies to provide assurance under the regulations. Second, the assurance must be provided in the proper amount and form, it must be signed by both the owner or operator and the financial institution (or someone properly acting on their behalf), and it must be in effect and submitted to the Regional Administrator by the required dates.

While financial assurance is in effect, the Regional Office will have to make certain that the assurance mechanism is updated during the operating life of the facility to reflect adjustments to cost estimates due to inflation and changes in cost estimates resulting from new plans. Increases in cost estimates must be covered by additional assurance, while owners or operators may request reduction in assurance when cost estimates decrease.

The Regional Office must also be sure that assurance is maintained in the event of bankruptcy of the financial institution or if the institution or parent guarantor ceases to remain qualified. The Regional Office must also permit the owner or operator to terminate assurance only when alternate assurance is being provided by the present or a new owner or operator. If the financial institution or parent guarantor sends notice of cancellation, the Regional Office must assure that either alternate financial assurance is provided within 90 days or the mechanism is used to fund closure and/or post-closure care.

The Regional Office should authorize reimbursement of closure and/or post-closure care expenses only after itemized bills are submitted and it is determined that the expenses are in accordance with the plan or otherwie justifiable. When payment for closure is being made from a TRUST FUND or pursuant to INSURANCE, the Regional Administrator may withhold reimbursement until closure is completed if he believes that the cost of closure will be significantly greater than the amount of assurance provided. Finally, the Regional Office will need to release owners and operators from financial assurance requirements once closure is complete and later, when post-closure care is complete.

The responsibilities of the Regional Office are summarized in Attachment II-2.

3. Financial Institution or Parent Guarantor

The financial institution or PARENT GUARANTOR becomes involved in the RCRA Subpart H requirements only because of the agreement it enters into with the owner or operator. As a result, the responsibilities of the financial institution or parent guarantor are prescribed by the instrument itself and its accompanying documentation and applicable state and federal regulations. In all cases, the financial institution and the owner or operator are responsible for ensuring that the wording of the instrument is identical to the regulations. Most of the other major obligations of the financial institution vary from mechanism to mechanism and are specified in the instrument.

One important feature is common to most methods of financial assurance involving a financial institution or a corporate guarantor -- cancellation. Notice must be given to both the owner or operator and the Regional Administrator 120 days before cancellation. If alternate assurance is not provided by the owner or operator within 90 days, the financial institution or parent guarantor will remain responsible according to the terms of the mechanism. The Regional Administrator is authorized to draw upon or enforce financial assurances prior to the effective date of their cancellation.

B. FINANCIAL ASSURANCE OPTIONS

This section is divided into two parts. The first describes the individual financial assurance mechanisms that are available to owners and operators under the RCRA financial assurance regulations. The second part describes how and when several different financial assurance mechanisms can be used together. Exhibit II-1 lists the financial assurance regulations by mechanism, while Exhibit II-2 gives an overview of these regulations by subject area.

1. Summary of Different Mechanisms

TRUST FUNDS assure payment of closure or post-closure costs from a fund held in trust by a bank or other qualified entity. The owner or operator deposits money over time into the fund, which is invested by the financial institution. Payments into the fund are generally made annually; the size of the payments required depends on the value of the trust fund at that time, the amount of cost estimates being assured, and the period over which payments are

EXHIBIT II-1

FINANCIAL ASSURANCE MECHANISMS REGULATIONS

Mechanism	Interim Status	Permitted Facility
Trust Funds		
Closure	40 CFR 265.143(a)	40 CFR 264.143(a)
Post-Closure	40 CFR 265.145(a)	40 CFR 264.145(a)
Financial Guarantee Bonds		
Closure	40 CFR 265.143(b)	40 CFR 264.143(b)
Post-Closure	40 CFR 265.145(b)	40 CFR 264.145(b)
Performance Bonds		
Closure	Not applicable	40 CFR 264.143(c)
Post-Closure	Not applicable	40 CFR 264.145(c)
Letters of Credit		
Closure	40 CFR 265.143(c)	40 CFR 264.143(d)
Post-Closure	40 CFR 265.145(c)	40 CFR 264.145(d)
Insurance		
Closure	40 CFR 265.143(d)	40 CFR 264.143(e)
Post-Closure	40 CFR 265.145(d)	40 CFR 264.145(e)
Financial Test and Corporate Guarantee		
Closure	40 CFR 265.143(e)	40 CFR 264.143(f)
Post-Closure	40 CFR 265.145(e)	40 CFR 264.145(f)
State-Required Mechanisms	40 CFR 265.149	40 CFR 264.149
State Assumption of Responsibility	40 CFR 265.150	40 CFR 264.150

Source: Title 40, Code of Federal Regulations (CFR).

EXHIBIT II-2

OVERVIEW OF FINANCIAL REQUIREMENTS REGULATIONS

Topic	Interim Status	Permitted Facilities
Definitions	40 CFR 265.141	40 CFR 264.141
Adjusting cost estimates for inflation	40 CFR 265.142(b)	40 CFR 264.142(b)
Use of multiple financial mechanisms; Use of one mechanism for multiple facilities	40 CFR 265.143(f),(g) (closure) 40 CFR 265.145(f),(g) (post-closure)	40 CFR 264.143(g),(h) (closure) 40 CFR 264.145(g),(h) (post-closure)
Release from Requirements	40 CFR 265.143(h) (closure) 40 CFR 265.145(h) (post-closure)	40 CFR 264.143(i) (closure) 40 CFR 264.145(i) (post-closure)
Combination of mechanisms (closure and post-closure)	40 CFR 265.146	40 CFR 264.146
Incapacity of owner, operator, guarantor, or financial institution	40 CFR 265.148	40 CFR 264.148
Wording of Instruments	40 CFR 265.151	40 CFR 264.151

Source: Title 40, Code of Federal Regulations (CFR).

to be made. A fee is usually charged for the institution's services. Through the payments into the fund and the income received on the investments, the trust fund is expected to grow until it is large enough to cover the estimated expenditures for closure and/or post-closure care. As these expenditures are made, EPA authorizes reimbursement from the trust fund. See Chapter III for details.

SURETY BONDS under RCRA are of two types: FINANCIAL GUARANTEE BONDS (which are allowed at both interim status facilities and permitted facilities) and PERFORMANCE BONDS (allowed only at permitted facilities). In a financial guarantee bond, a SURETY guarantees that a specific amount of money will be available for closure and/or post-closure care if the owner or operator fails to fulfill its obligations. A PREMIUM is charged to the owner or operator for this guarantee. In a performance bond, the surety may either perform closure and/or post-closure care or pay the PENAL SUM of the bond, if the owner or operator fails to fulfill its obligations. Under either type of bond, the owner or operator establishes a STANDBY TRUST FUND, into which any payments from the surety will be made. If the surety is required to pay or perform under the terms of the surety bond, the surety would probably seek to recover its expenses from the owner or operator. See Chapter IV for details.

LETTERS OF CREDIT provide assurance of the availability of funds for closure and/or post-closure expenses from a bank or other financial institution. Firms with a good credit history with a financial institution may find this mechanism desirable, since the bank's fee and interest rate are negotiable and are based on the firm's credit-worthiness. Under this arrangement, EPA can direct the deposit of the funds into a STANDBY TRUST FUND, to be used for closure and/or post-closure payments in case of nonpayment or nonperformance by the owner or operator or if the letter were being cancelled without the substitution of alternate assurance. The bank would then require repayment from the owner or operator including an interest charge. The owner or operator cannot draw upon the letter of credit to finance actual closure and/or post-closure activities (it must use other funds or credit lines to pay for these activities). See Chapter V for details.

INSURANCE assures payment of closure or post-closure expenses whenever needed by an insurance company regardless of the owner or operator's ability to pay these costs. The insurer agrees to reimburse providers of closure and/or post-closure care at the direction of the EPA. PREMIUMS must be paid by the owner or operator. The owner or operator is essentially paying the insurer to assume the liability of providing for closure and/or post-closure expenses up to the FACE AMOUNT of the policy. This may be a desirable option for firms with a good relationship with an insurer, or for use by small firms for which after-tax trust fund payments may be relatively high compared to insurance premiums. This type of insurance should not be confused with liability insurance for sudden and non-sudden events. See Chapter VI for details.

THE FINANCIAL TEST and CORPORATE GUARANTEE provide assurance to EPA that an owner or operator or its PARENT CORPORATION is financially strong enough to be able to pay the estimated costs for closure and/or post-closure care. The specific requirements of two sets of financial test criteria are described in detail in Chapter VII; at least one of these sets of criteria must be met. In general, firms must have adequate NET INCOME, NET WORKING CAPITAL, ASSETS, or NET WORTH relative to the total estimated closure and/or post-closure expenses, or have ready access to capital. A high bond rating may be used to satisfy some of the test criteria. This option will be attractive for many large domestic firms in strong financial condition. The cost to the firm or its parent company will almost certainly be less than the costs of payments to financial institutions under the other alternatives, since the firm is neither building a fund nor paying a (risk) premium.

STATE MECHANISMS are any financial assurance mechanism required or offered by a state government that offers assurance of payment of closure or post-closure care expenses equivalent to the federal RCRA assurance mechanisms. EPA must approve the use of these mechanisms, in whole or part, in satisfaction of federal requirements. Some states have established provisions or funds which assume responsibility for closure and/or post-closure care. While not necessarily relieving the owner or operator from ultimate liability, a state's assumption of responsibility provides assurance to EPA that closure and/or post-closure expenses will be met. Use of these financial assurance options for facilities in states without INTERIM AUTHORIZATION is discussed in Chapter VIII.

2. Using Combinations of Mechanisms and Covering Multiple Facilities

One financial mechanism may be used for both closure and post-closure care of a facility. Owners or operators may also use one or more financial mechanisms to cover multiple facilities, or combine different mechanisms to cover one facility. For example, when coverage must be increased due to inflation or changes in plans, adding a different mechanism could be less expensive or burdensome than increasing the coverage of existing mechanisms. Combinations of mechanisms may be used for: (1) closure only, (2) post-closure only, or (3) closure and post-closure.

Not all mechanisms may be used in combination. Combinations of trust funds, financial gurantee bonds, letters of credit, and insurance are permissible. Firms using the financial test, corporate parent guarantee, or performance bond to provide assurance of closure and/or post-closure care at a facility may not use other financial mechanisms to cover some of the costs of the same facility, even if the cost estimate increases. The financial test, parent guarantee, and performance bond may only be used to cover the entire closure cost estimate and/or post-closure cost estimate of a facility. A single facility could, however, utilize the financial test, corporate guarantee, or performance bond for closure only and one of the other mechanisms for post-closure care, or vice versa.

If an owner or operator wishes to use a trust fund in combination with a financial guarantee bond or letter of credit, it need not establish a separate standby trust fund, since the role of the standby trust fund is fulfilled by the trust fund itself. Similarly, it need only establish one standby trust fund for combinations of financial guarantee bonds and letters of credit.

Owners or operators must submit specific documentation of facilities and amounts covered by each mechanism when assurance is being provided for multiple facilities. If the facilities are located in more than one EPA region, identical evidence of financial assurance must be submitted to the Regional Administrator of each region. In any case, the total financial assurance must equal at least the amount of the total cost estimates. This assists EPA in verifying the adequacy of coverage for each site and coordinating this verification process among regions.

When the Regional Administrator authorizes use of funds for closure or post-closure care of a facility, he may direct payments from any or all mechanisms used in combination to provide coverage for that facility. The choice of which mechanism to draw upon first rests with the Regional Administrator. For example, if a letter of credit and an insurance policy cover a facility, the Regional Administrator may authorize withdrawal from either instrument. In the case of multiple facilities covered by a single mechanism, he may use only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism. For example, if a trust fund covers three facilities and the Regional Administrator must authorize funds for only one, he may continue to draw upon the trust fund only up to the amount stipulated for that facility.

C. QUALIFICATIONS FOR FINANCIAL INSTITUTIONS AND PARENT GUARANTORS

All of the financial assurance mechanisms except the financial test require that a third party assure the payment of closure and post-closure expenses. Exhibit II-3 shows the minimum qualifications for financial institutions acting as trustees, or issuing letters of credit, surety bonds, and insurance policies, and the minimum qualifications for a parent corporation to act as a corporate guarantor.

D. INITIAL SUBMISSIONS

All documents and correspondence to be submitted to the Regional Administrator regarding financial assurance requirements should be marked "Attention: RCRA Financial Requirements" as part of the address.

Use of certified mail is only required when financial institutions or corporate guarantors submit notices of intent to cancel or terminate mechanisms and when the owner or operator or corporate guarantor submit notices of commencement of bankruptcy proceedings.

EXHIBIT II-3

QUALIFICATIONS FOR FINANCIAL INSTITUTIONS AND PARENT GUARANTORS

INSTITUTION	MECHANISM	QUALIFICATIONS
Banks, savings and loans, other financial institutions	Trust Fund	Authority to act as a trustee; trust operations regulated and examined by a Federal or State Agency
Surety companies	Surety Bond	Listed as an acceptable surety in Circular 570 of the U.S. Department of Treasury and licensed in the state where the surety bond is executed
Banks, savings & loans, mutual savings banks, credit unions	Letters of credit	Authority to issue letters of credit; letter of credit operations regulated and examined by a Federal or State Agency
Insurance companies	Insurance	Licensed to transact the business of insurance in one or more states; or eligible to provide insurance as an excess or surplus lines insurer, in one or more states
Parent Corporation	Corporate Guarantee	Directly own at least 50 percent of the voting stock of the owner or operator; must also satisfy financial test

1. Form and Amount of Financial Assurance

The precise wording required for each mechanism is specified in the regulations. Copies of the required wording for individual mechanisms are included in the later chapters of this manual as Attachments. Both the owner or operator and the financial institution or parent guarantor must assure that the wording of financial mechanisms conforms to the regulations.

The required documents will always include a list or letter identifying the facilities covered. The information must include:

- The facility's EPA Identification Number
- The name and address of the facility
- Identifying information on the financial instrument, if any, including the name and address of the issuing institution, and identification number of the instrument itself.
- Amount of funds for closure or post-closure assured by each mechanism for each facility.

The owner or operator must be sure that the signatories are authorized to act as representatives of the firm in transactions of that type. If the owner or operator is a division of corporation, for example, an officer of the corporation must usually sign on the division's behalf. If the owner or operator is a partnership, the signatory must indicate that he is signing for the partnership (i.e. with words such as "for the partnership" or "for ABC Company"). If the owner or operator is an individual, he may sign himself. In all cases, however, persons having an appropriate POWER OF ATTORNEY may sign on behalf of the owner or operator; a copy of the power of attorney should be attached to the document.

These documents must be in effect by the effective date of the regulations (for facilities under interim status), or before the first receipt of hazardous waste (for new permitted facilities). The owner or operator is responsible for verifying that the accountant, financial institution, assurance mechanism, or corporate parent meets EPA requirements, which are detailed in Chapters III through VIII of this manual.

The amount of the financial assurance must, at a minimum, equal the CURRENT COST ESTIMATES for closure and/or post-closure care. Of course, if multiple mechanisms are used (see Section B of Chapter II), the combined coverage must at least equal the cost estimate. The initial amount of coverage may be larger than the cost estimate in order to accommodate expected revisions in the estimate due to inflation.

The owner or operator is responsible for ensuring that the mechanism(s) cover(s) the entire estimated cost, with one exception. If the trust fund is employed, then a pay-in period is allowed before the trust fund completely covers the closure or post-closure cost estimates.

2. Obtaining Financial Assurance

If an owner or operator decides on a mechanism involving a credit or insurance arrangement (surety bond, letter of credit, insurance policy), the financial institution will request detailed information on the facility and the firm itself. This information may include:

- Historical financial data (balance sheets and profit and loss statements) on the facility and the business entity (corporation, partnership, etc.) owning or operating it;
- Current financial statements (probably the latest interim statements will be required);
- Projected financial information (income statements, cash flows, and balance sheets) reflecting the expected risks and profits associated with the future operation of the facility;
- The closure or post-closure plans and cost estimates;
- A description of the facility, its location, the types and quantities of waste, and other information reflecting the risks involved with the site;
- A description of the business entity owning or operating the facility and its other facilities and lines of business;
- The past operating experience of this facility and others owned or operated by the same business entity; and
- A description of the principal individuals owning and operating the facility, including their qualifications, experience, and financial condition.

Initially, the availability of certain mechanisms (*e.g.*, surety bond, insurance) may be limited in some areas.

E. SUBSEQUENT RESPONSIBILITIES FOR UPDATING AND MAINTAINING COVERAGE

1. Updating Coverage

EPA rules for estimating closure and post-closure costs require that during the operating life of the facility cost estimates be adjusted annually to take account of inflation and that new cost estimates be calculated each time closure or post-closure plans are changed. In either instance, owners or operators may need to increase the amount of financial assurance initially provided.

Adjustment for inflation is calculated using the INFLATION FACTOR derived from the Implicit Price Deflator for Gross National Product as published in the U.S. Department of Commerce Survey of Current Business and in the Economic Indicators published by the Council of Economic Advisors. The inflation factor is calculated by dividing the latest published annual deflator by the deflator for the previous year. Owners or operators may contact local libraries or the appropriate Regional Office to obtain data on deflators and the current inflation factor. The adjustment must be made within 30 days after the anniversary of date on which the initial cost estimate was prepared.

Whenever the CURRENT COST ESTIMATE exceeds the coverage of the financial assurance mechanism(s) because of increases due to inflation or changes in plans, the owner or operator must arrange for increased coverage using the same mechanism or through a combination of mechanisms. The additional coverage must be obtained and evidence of it submitted to the Regional Administrator within 60 days after the cost estimate increase.

If during the operating life of the facility the cost estimate for closure or post-closure should decrease due to a change in operating plans or other factors, the owner or operator may apply to the EPA Regional Administrator for approval of a decrease in coverage. In certain instances, decreases in assurance may be permitted during the post-closure period. Generally, the Regional Administrator will require that the closure or post-closure plans and cost estimates be submitted for review; requests for decreases in coverage will be denied when plans or cost estimates are incomplete or if cost estimates are unreasonably low. Potential effects of inflation will also be a major consideration in evaluating requests for decreases in the amount of post-closure funds assured. See Chapters III through VII for details.

Cost estimates, closure and post-closure plans, and amount of financial assurance may be verified by the Regional Administrator. The latest or latest adjusted closure and post-closure cost estimates must be kept with the latest closure and post-closure plans at the facility.

2. Maintaining Assurance

To maintain assurance, owners or operators are required to make required payments and provide assurance at least equal in amount to current cost estimates. In addition, an owner or operator must also change to an alternate assurance mechanism:

- In the event of bankruptcy of the institution acting as trustee or issuing the letter of credit, surety bond, or insurance contract;
- Whenever the financial institution ceases to qualify under the regulations; and
- If the financial test or corporate guarantee is disallowed.

In the first two of these cases, the owner or operator has 60 days to obtain alternate assurance; in the last, it has 30 days.

In addition, the owner or operator or corporate guarantor must inform the Regional Administrator within 10 days after being named as a debtor in a bankruptcy proceeding.

Finally, if ownership or operating responsibility for the facility is transferred, the Regional Administrator will not permit the previous owner or operator to terminate financial assurance until the new owner or operator has obtained acceptable assurance.

3. Cancellations

Because the financial requirements have been developed to assure the availability of funds for closure or post-closure care, the regulations impose specific requirements on financial institutions or parent guarantors who wish to cancel their RCRA financial mechanisms. An issuer of a surety bond, letter of credit, insurance policy or corporate guarantee must notify both the owner or operator and the Regional Administrator(s) by certified mail of its intent to cancel or terminate the mechanism. Cancellation of a surety bond, insurance contract, or corporate guarantee may not occur during the 120 days beginning with the date of receipt of the notice by both the Regional Administrator and the owner or operator, as evidenced by the return receipts. In the case of the letter of credit, notice must be given at least 120 days before the current expiration date.

In general, the owner or operator is responsible for obtaining alternate assurance if the financial institution or corporate guarantor intends to cancel; however, the chapters on the individual mechanisms will need to be consulted because the obligations and powers of the EPA Regional

Administrator, the owner or operator, and the financial institution or corporate guarantor may differ depending on the mechanism being used.

Of course, the owner or operator may request cancellation or termination of a mechanism when alternate assurance has been substituted or when released from the financial requirements. See Section G below.

4. Changing Mechanisms Voluntarily

Owners or operators may voluntarily change the mechanism being used to provide assurance of financial responsibility with prior written approval from the Regional Administrator. If the mechanism has been providing assurance for facilities in more than one Region, the prior written approval of all the affected Regional Administrators is needed.

To receive approval, the new mechanism must comply with EPA's regulations for eligibility. The new mechanism, if approved, must become effective before or at the time that the previous mechanism expires. The Regional Administrator must ensure continuity of coverage, but should strive for the minimum necessary amount of overlap to reduce the cost to the owner or operator. For example, if an owner or operator changes from a trust fund to another financial assurance mechanism, the Regional Administrator should not direct the trustee to release funds from the trust until the new mechanism is effective.

Changing to a trust fund poses special problems. When an owner or operator cancels other assurance to change to a trust fund, the amount of money deposited into the trust fund must be equal to the amount that would have had to be in the trust fund if the trust had been the original financial assurance mechanism and payments to the trust had been made as specified in the regulations. This is discussed in more detail in Chapter III.

F. DRAWING ON FUNDS

The conditions under which the owner or operator or the Regional Administrator may draw on a financial assurance mechanism will vary with each mechanism. These conditions are described in Chapters III through VII. Regional Administrators may follow a common procedure, however, when authorizing reimbursement of closure or post-closure expenses in certain situations, including the following:

- the owner or operator uses the trust fund mechanism to satisfy financial requirements
- the surety has placed funds in a standby trust
- the Regional Administrator has directed the deposit of funds through a letter of credit into a standby trust

- the owner or operator uses the insurance mechanism to satisfy financial requirements

- the corporate guarantor has placed funds in a trust

In these cases, reimbursement of expenses for closure or post-closure care will be subject to the regulations governing trust funds (See Section C.5 of Chapter III) and insurance (see Section C.5 of Chapter VI). The basic requirements include:

(1) review of itemized bills;

(2) determination within 60 days whether the expenditures are consistent with closure or post-closure plans, or are otherwise justifiable;

(3) approval of requests for reimbursement and direction of payment within 60 days unless there is reason to believe that the cost of closure will be significantly greater than available funds; in that case, complete reimbursement should be withheld until certification of proper closure is completed;

(4) approval of requests for reimbursement of post-closure expenditures, if determined to be justifiable.

When assessing itemized bills submitted by owners or operators, the Regional Administrator will need to decide if any extra expenditures, such as the costs of responding a contingency not accounted for by the plan (bad weather, liner failure, etc.) should be reimbursed by the trust or paid by the owner or operator. Separate payment required of a financially troubled owner or operator may cause it to go into bankruptcy. In this case, EPA might be left responsible for completion of closure or post-closure care of the facility. On the other hand, if the Regional Administrator agrees to reimbursement, there is the possibility that the trust fund will run out of funds before the completion of these activities. This dilemma will have to be solved by the Regional Administrator on a case-by-case basis, in consultation with Headquarters. The owner or operator, of course, remains responsible for all closure and/or post-closure costs even if the financial assurance monies are exhausted.

G. RELEASE FROM RCRA FINANCIAL REQUIREMENTS

An owner or operator of a hazardous waste facility is released by the Regional Administrator (1) from the closure financial assurance requirements when it satisfactorily certifies to EPA that closure has been completed in accordance with the closure plan and (2) from the post-closure financial assurance requirements when the post-closure care requirements have been completed in accordance with the post-closure plan. The certification of closure must be provided by the owner or operator and by an independent registered professional engineer.

In the case of financial assurance for closure, the Regional Administrator will determine whether closure is satisfactory, and notify the owner or operator within 60 days of receiving the certifications. For release from post-closure assurance requirements, the Regional Administrator will approve release at the end of the post-closure period specified in the post-closure plan, upon request of the owner or operator, if post-closure care has been satisfactorily provided in conformity with the plan.

Additionally, an owner or operator may be released from the federal RCRA requirements if (1) the administration of the hazardous waste program is taken over by an authorized state government or (2) ownership or operation of the facility has been transferred, but only in accordance with the specific conditions of such transfers. There should be no lapse in coverage allowed in such circumstances.

H. DIFFERENCES BETWEEN REQUIREMENTS FOR INTERIM STATUS AND PERMITTED FACILITIES

This manual contains guidance for both interim status and permitted facilities. Interim status facilities are existing facilities who have submitted notifications and Part A's and are awaiting final disposition of permit applications. A permitted facility is one which has demonstrated compliance with RCRA standards and has received a permit.

The guidance in this manual primarily addresses the financial responsibility requirements for interim status facilities. The additional requirements for permitted facilities are included in the chapters on the mechanisms. It is useful to remember that there are only four differences between interim status and permitted facility financial assurance requirements:

(1) While financial assurance mechanisms for interim status facilities must generally be in force by the effective date of the regulations, new permitted facilities must provide assurance before the first receipt of hazardous waste at the facility.

(2) The "pay-in" period for trust funds is defined differently for permitted and interim status facilities. The pay-in period is 20 years (interim status) or the life of the initial RCRA permit (permitted facilities) or the remaining life of the facility (both interim status and permitted facilities), whichever is shorter. (See Chapter III)

(3) The receipt from the trustee for the initial payment into the trust fund must be submitted by the owner or operator to the Regional Administrator before the first receipt of hazardous waste at a new permitted facility. Interim status facilities need not submit a receipt. (See Chapter III)

(4) Performance bonds are not a permissible form of surety bond for interim status facilities under the regulations, but are permissible for permitted facilities. (See Chapter IV)

I. USE OF THE HAZARDOUS WASTE DATA MANAGEMENT SYSTEM

The Hazardous Waste Data Management System (HWDMS) is being developed to aid Regional Office staff in tracking enforcement activities, compliance monitoring, and the status of permits. The HWDMS could prove particularly valuable for management of the financial assurance programs in at least four ways, outlined below.

(1) Recordkeeping. The HWDMS will have at a minimum a list of EPA facilities in the region, indexed by name and by EPA Identification Number. Each facility must have the following financial assurance information in its file:

- Type of instrument or guarantee
- Name and address of issuer or guarantor
- Amount of closure or post-closure costs currently covered by instrument (both in dollars and as a percentage of total costs)

This information will enable Regional Office staff to identify the facilities for which financial assurance has not been provided, as well as the adequacy of the funds assured. In addition, the HWDMS can be used to track other pieces of information such as:

- Number of instrument
- Effective date of instrument
- Date of expiration of instrument
- If multifacility instrument, name and number of other facilities in Region, name and number of facilities outside Region
- Authorized payments made from instrument

- Total closure and post-closure cost estimates
- Narrative comments

A detailed, computerized recordkeeping function could reduce clerical requirements and speed access to critical information.

(2) "Tickler" File. The RCRA financial assurance regulations specify different timetables and deadlines that the Regional Administrator must follow. The HWDMS could ease this burden considerably by automatically tracking critical dates of submission, notifications, etc. and providing computer readouts of facilities or owners and operators that require attention. For example, the printouts of critical dates and required actions could be ordered for a given owner, operator, or facilities. Alternatively, the printouts could be weekly updates of actions required from all facilities, owners, operators, or financial institutions within the next 30 days.

Two levels of tickler files could be established, one for regularly scheduled events, and one for unscheduled events:

(A) Scheduled events such as expiration dates of financial instruments and inflation adjustment dates could be programmed into the file on the date of submission, and at known intervals after submission.

(B) Unscheduled events such as increases in cost due to operating plan changes, cancellation notices, owner or operator bankruptcies, and issuer disqualifications can be programmed in the file when notification is received.

The HWDMS can be particularly useful in tracking the adequacy of financial assurance with respect to annual adjustments in cost estimates due to inflation.

(3) Financial Test and Corporate Guarantee. The Regional staff could develop a filing system of data taken from the chief financial officer's letter and auditor's opinion (see Exhibit VII-4 for an example of such a file). If this filing system were automated, a simple computer program could screen trends in the financial data and "red flag" any owner, operator or corporate parent that appears to be deteriorating.

(4) Trust Fund Payment Calculations. The Regional Administrator could develop an audit system to ensure that the required payments are being made to the trust fund, as explained in Chapter III. The calculation of the required payments could become complex if multi-instrument or multi-facility financial assurance mechanisms are employed. Automating these calculations would result in a fast, error-free audit process.

Undoubtedly, other applications of the HWDMS to managing financial assurance programs could be developed. However, detailed discussion of the HWDMS is outside the scope of this manual.

ATTACHMENT II-1

SUMMARY OF OWNER OR OPERATOR RESPONSIBILITIES*

(1) Be certain that the financial assurance mechanism:

  (a) Is worded as required;
  (b) Is in the proper amount;
  (c) Is signed as required;
    Is issued by a qualifying institution;
  (d) Is in effect at the appropriate time; and
  (e) Is submitted to the Regional Office on time.

(2) Increase the amount of assurance when necessary during the operating life of the facility due to:

  (a) Annual adjustments for inflation; and
  (b) Changes in plans and increases in cost estimates
    Submit evidence of increase in coverage within 60 days.

(3) Apply for decreases in the amount of assurance when appropriate.

(4) Obtain new assurance:

  (a) When the financial institution enters bankruptcy, ceases operations, or ceases to qualify; or

  (b) When the financial institution notifies its intent to cancel the assurance.

(5) Notify the Regional Administrator by certified mail within 10 days after the commencement of a bankruptcy proceeding.

(6) Request termination of financial assurance when alternate assurance is provided or when released from financial assurance requirements.

(7) Submit itemized bills for reimbursement for closure and post-closure care.

(8) Request release from financial assurance requirements when final closure is properly completed and again when post-closure care is completed.

---

* NOTE: Responsibilities and rights may vary with the specific financial assurance mechanism used. For details, consult Chapters III through VIII of this manual.

ATTACHMENT II-2

SUMMARY OF REGIONAL OFFICE RESPONSIBILITIES*

(1) Check the qualifications of the financial institution, etc.

(2) Verify that the financial assurance mechanism:

- (a) Is correctly worded;
- (b) Is in the proper amount;
- (c) Is complete;
- (d) Is signed as required; and
- (e) Is in effect and submitted to the Regional Office on time.

(3) Make sure that the amount of financial assurance is increased when necessary during the operating life of the facility due to:

- (a) Annual adjustments for inflation, and
- (b) Changes in plans and increases in cost estimates

(4) Allow decreases in the amount of financial assurance only when cost estimates decrease and the amount of assurance will be adequate.

(5) Verify that new assurance is obtained:

- (a) When the financial institution enters bankruptcy or ceases operations;
- (b) When the financial institution or parent guarantor ceases to qualify; or
- (c) When the owner or operator requests termination of assurance because a new mechanism is being used or ownership or operating responsibility is being transferred.

(6) Approve requests for a change in mechanisms when no lapse in coverage will result.

(7) When the financial institution or parent guarantor sends notice of cancellation, ensure that alternate assurance is provided or the financial mechanism is used to fund closure and/or post-closure care.

---

* NOTE: Responsibilities and rights may vary with the specific financial assurance mechanism used. For details, consult Chapters III through VIII of this manual.

ATTACHMENT II-2 (continued)

SUMMARY OF REGIONAL OFFICE RESPONSIBILITIES*

(8) Approve requests for reimbursement for closure and/or post-closure expenses only when itemized bills are submitted and the expenses are in accordance with the plan or otherwise justified. Instruct the insurer or trustee in writing to make reimbursement in the specified amounts. If closure costs will significantly exceed the value of a trust fund or remaining insurance, withhold a portion of reimbursement until completion of closure.

(9) Permit release from financial assurance requirements only when closure and/or post-closure care is properly completed.

(10) Approve requests to terminate financial assurance:

  (a) When alternate assurance is substituted; or

  (b) When the owner or operator is released from financial assurance requirements.

(11) Record relevant information in HWDMS and monitor deadlines for submissions

---

* NOTE: Responsibilities and rights may vary with the specific financial assurance mechanism used. For details, consult Chapters III through VIII of this manual.

III. ESTABLISHING FINANCIAL RESPONSIBILITY USING TRUST FUNDS

A. INTRODUCTION

This chapter describes how owners or operators can fulfill their RCRA financial requirements through TRUST FUNDS. A TRUST is a three-party agreement whereby one party, called the GRANTOR (sometimes also called the TRUSTOR), transfers some assets (often money) to a second party, called the TRUSTEE, to hold on behalf of a third party, called the BENEFICIARY. In a RCRA trust fund, the owner or operator is the grantor, a bank or other entity that fulfills the RCRA requirements is the trustee, and EPA is the beneficiary. The owner or operator, as grantor, pays into the trust fund which is held in trust by the trustee. The fund is used to pay for closure and/or post-closure care. The entire arrangement is governed by a TRUST AGREEMENT that sets out the responsibilities and rights of each party.

The trustee is empowered to invest the trust funds during the existence of the trust. The investments which the trustee may make are limited by the RCRA regulations (see Exhibit III-1 below) and sometimes by state law. Any investment income accrues to the trust, and reduces the required payments into it by the owner or operator. Of course, the return on the truste's assets will vary depending on the investments made. The owner or operator usually pays a fee for the trust services provided.

The regulations pertaining to RCRA trust funds are as follows:

EXHIBIT III-1

RCRA TRUST FUND REGULATIONS

Topic	Interim Status	Permitted Facilities
Closure trust	40 CFR §265.143(a)	40 CFR §264.143(a)
Post-closure trust	40 CFR §265.145(a)	40 CFR §264.145(a)
Wording of Trust Agreement	40 CFR §264.151(a)	40 CFR §264.151(a)

Source: Title 40, Code of Federal Regulations (CFR).

B. RCRA TRUST FUND REQUIREMENTS

This section describes both the features of RCRA trust funds themselves and the responsibilities of owners and operators using trust funds to demonstrate financial assurance. A checklist of these responsibilities appears in Attachment III-1 at the end of this chapter.

INITIAL RESPONSIBILITIES OF THE OWNER OR OPERATOR

1. Qualifications for Trustee. The first step that an owner or operator considering using a trust fund must take is to locate a qualified entity willing to act as trustee. EPA requires that the trustee be an entity that has the authority to act as trustee and whose trust operations are regulated and examined by a federal or state agency. If the owner or operator has any doubt about whether the entity is empowered to act as a trustee, he should ask the entity what authority regulates it and then contact the authority to determine whether the entity has the power to act as trustee. Exhibit III-2 at the end of this chapter indicates the primary regulatory authority for different types of financial institutions. Appendix A-2 lists relevant federal agencies; Appendix B includes a list of relevant state agencies.

2. Wording and Amount of Assurance. Several particular aspects of the trust agreement merit special attention:

First, the trust is irrevocable; it cannot be changed or terminated by the owner or operator except with written agreement of the trustee and the Regional Administrator.

Second, unlike the surety bond, letter of credit, insurance contract, or corporate guarantee, the trust agreement does not assure that the total amount (i.e., the current cost estimate) for closure or post-closure will be made available at any time; the trustee need only provide the amount of funds that has accumulated in the trust as of the time of closure. (See Section 4 of the Trust Agreement form, Attachment III-3.) Generally, annual payments will be made into the fund based on the formula discussed in Section B, Part 5 below. Payments into the trust are based on a formula which should ensure that the total amount needed will be available at the end of the planned PAY-IN PERIOD. (See Attachment III-4 which shows how initial payments are calculated.) The owner or operator may, however, choose to make payments to the fund at an accelerated rate or deposit the full amount of the cost estimates at the time the fund is established. The owner or operator remains responsible at all times for the full amount of closure and post-closure expenses even if--due to early closure, for example--the trust fund has not accumulated sufficiently to reimburse the owner or operator for all required expenses.

Finally, the text of the trust agreement itself does not identify the facilities covered by the trust fund or the current cost estimates for these facilities. The facilities and cost estimates are listed on a separate

EXHIBIT III-2

RCRA TRUST FUND: REGULATORY AUTHORITIES FOR FINANCIAL INSTITUTIONS

Type of Financial Institution	Primary Regulatory Authority	Whom to Call
1. State-Chartered Financial Institutions, Including Commercial Banks, Savings and Loans, Mutual Savings Banks, Credit Unions, State Licensed Foreign Banks	State Authority	See Appendix B
2. Nationally-Chartered Commercial Banks, Nationally-Licensed Foreign Banks, all Washington, D.C. commercial banks	Comptroller of the Currency	Trust Division (202) 447-1731
3. Nationally-Chartered Savings and Loans	Federal Home Loan Bank Board	General Counsel, (202) 377-6000
4. Nationally-Chartered Mutual Savings Banks	Federal Home Loan Bank Board, State Authorities	As Number 3, and see Appendix B
5. Nationally-Chartered Credit Unions	National Credit Union Administration	General Counsel, (202) 357-1030

Schedule A. This Schedule A must be updated within 60 days after each change in cost estimates, either because of adjustments due to inflation or because new closure and/or post-closure plans or cost estimates have been prepared.

Attachment III-3 contains the required wording for RCRA trust agreements. The trust agreement must be signed by both the owner or operator and the trustee. These signatures certify that the wording of the trust agreement is identical to the wording in the regulations. Attachment III-3 also provides samples of Schedule A (identification of facilities and cost estimates) and Schedule B (property used to establish trust fund).

The agreement must be properly "ACKNOWLEDGED." An ACKNOWLEDGMENT is a formal declaration by persons entering into an agreement that they affirm their obligations created in the agreement and are acting of their own free will. See Attachment III-3 for an example. The requirements for acknowledgments differ from state to state.

3. Establishing a Trust Fund. The wording of the agreement itself is specified in the regulations, but the trustee will be able to tell the owner or operator (1) the fees to be paid for its trust services, (2) the investment strategy it plans to follow, and (3) whether the trust could qualify to be invested together with other funds in a COMMON TRUST. Each of these topics receives further discussion here.

(a) Fees and Taxes - Trustee's fees can be expected to vary depending on the specific institution chosen, the amount of funds held in trust, the extent to which the owner or operator uses other services of the institution, and the extent and type of investment activity and trustee involvement. The owner or operator should not only find out what fees the institution itself will charge, but also the other applicable fees and charges, including brokerage fees, legal fees (such as those for setting up the trust), accounting fees, and provisions for local, state, and federal income taxes. There is currently no provision in the U.S. Internal Revenue Code that allows payments into the fund to be deducted from taxable income or allows trust income to be exempt from taxation. EPA has asked the Internal Revenue Service to render an opinion on the tax aspects of RCRA trust funds. Owners or operators may want to request private rulings on this matter from the Internal Revenue Service under Revenue Procedure 80-20.

(b) Investment Strategy - Money held in a RCRA trust fund must be invested by the trustee in accordance with the general investment policies and guidelines of the owner or operator and subject to the conditions listed in the trust agreement. Trustees have reasonably broad discretion in investing trust funds, but they are held to a legal standard called the "PRUDENT MAN" STANDARD. This standard is stated in the trust agreement as requiring the discharge of duties "with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims" (Section 6). EPA has, however, provided several exceptions to the usual interpretation of this standard. The reasons for these exceptions are discussed in the Background Document cited in Exhibit I-5 in Chapter I.

First, the trust agreement forbids the trustee to invest in SECURITIES OR OTHER OBLIGATIONS of the grantor, or any other owner or operator of the facilities for which the trust fund is established, or any of their affiliates as defined in Section 6(i) of the Trust Agreement. Thus, even if the grantor is owned by a very large, stable corporation that would be a sound, prudent investment, the trust agreement specifically prohibits the trustee from investing trust funds in the grantor's parent. This prohibition does not apply, however, to securities or other obligations of the federal government or state governments. Even if the federal government or a state government owns a facility or the land on which it is situated, the trustee for the operator may invest in federal or state securities or other obligations.

The second exception to the prudent man standard contained in the trust agreement applies to the usual rule requiring the trustee to keep trust property segregated from the trustee's own funds and from other funds. The trustee is allowed to invest in time or demand deposits of the trustee institution, up to the amount insured by law. The trustee is also permitted to put trust fund assets into any appropriate "common, commingled, or collective trust fund created by the Trustee," in other words, a common trust.

The third and final exemption to the prudent man standard is that the trustee can hold cash for a reasonable period of time while awaiting investment or distribution and is not liable for paying interest on that cash.

It should be noted that individual states may impose stricter requirements than the federal regulations concerning the investments in which trust funds may be placed. Owners or operators will want to make sure that the trustee is aware of any state requirements concerning hazardous waste site trust funds.

(c) Common Trust Funds - Finally, the owner or operator should determine whether the trustee plans to invest the trust in a common trust fund. Common-trust funds pool a number of trust accounts and invest them for potentially higher yields and at sometimes decreased fees and costs because of the increase in investment size. Since smaller trusts can often benefit from common trust funds, common trusts may make the trust-fund mechanism of financial assurance more attractive to owners or operators with small financial assurance needs. Not every financial institution will offer such a trust fund due to the requirements of other federal and state agencies such as the Securities and Exchange Commission. The trustee need not establish a special common trust for RCRA trust funds, but any common trust in which RCRA trust funds participate would have to fulfill all the requirements of the trust agreement.

4. Submission of Documents to EPA. The owner or operator is required to submit the following documents to the EPA Regional Administrator:

- An ORIGINALLY SIGNED DUPLICATE of the trust agreement;
- A formal certification of acknowledgement.

The trust agreement must be effective, the first payment into the trust fund made, and an originally signed duplicate of the agreement delivered to the Regional Administrator, all by the effective date of the regulations for interim status facilities.

SUBSEQUENT RESPONSIBILITIES OF THE OWNER OR OPERATOR

5. Updating the Trust Fund. The owner or operator generally must make annual payments into the trust fund. The trust agreement provides that, during the "PAY-IN PERIOD," the trustee must notify the Regional Administrator (by certified mail, within 10 days) if the owner or operator fails to make an annual payment into the trust fund within 30 days after the anniversary date of the first payment. The pay-in period is defined as 20 years or the remaining operating life of the facility as estimated in the closure plan, whichever is shorter. The amount of the payments is determined by the closure and/or post-closure cost estimates, the amount already in the trust fund, and the pay-in period. As already mentioned, the first payment must be made by the effective date of the regulations.

The formula for computing the amount of payment is:

$$\frac{CE - CV}{Y}$$

where
CE is the current closure cost estimate and/or the current post-closure cost estimate,
CV equals the current value of the trust fund, and
Y equals the number of years remaining in the pay-in period.

Each year, at least 30 days prior to the anniversary date of the establishment of the trust fund, the trustee must value the assets in the trust fund and send a statement of the valuation, detailing the results of investment activity and the expenses levied against the fund, to the owner or operator and the Regional Administrator. Securities in the trust fund must be valued at their market value no more than 60 days prior to the anniversary date of the fund.

The owner or operator may object, in writing, to the trustee's investment activities or to expenses levied against the trust fund within 90 days of receiving the valuation statement. Despite any objections, the owner or operator is obliged to make the required payments into the fund by the appointed dates. EPA may object to any of the trustee's activities at any time.

As mentioned previously, owners or operators may elect to make payments into the trust fund at an accelerated rate or to deposit the full amount of the cost estimates at the time the fund is established. The trustee must still, however, value the fund annually and provide a statement to the grantor and Regional Administrator confirming the value of the fund. The owner or operator must maintain the value of the trust fund at no less than if payments had been made according to the formula described above.

If the operating life of the facility extends beyond the original pay-in period, the owner or operator continues to remain responsible for ensuring that the value of the trust fund equals or exceeds the current cost estimate. Thus, whenever the cost estimate changes and becomes greater than the most recent annual valuation of the trust fund, an additional deposit must be made into the trust fund or alternative financial assurance obtained within 60 days. The Trustee is not required to send the Regional Administrator a notice of non-payment if the owner or operator fails to make a payment after the pay-in period is completed, however.

During the operating life of the facility, the Regional Administrator may approve a request by the owner or operator for release of funds from the trust fund if the current value of the trust fund (according to the trustee's most recent statement of value) exceeds the total of the applicable cost estimates. Similarly, during the period of post-closure care, the Regional Administrator may approve a release of funds if the owner or operator can demonstrate that the value of the trust fund exceeds the remaining cost of post-closure care. Such situations might occur if the owner or operator had made deposits higher than those required by these regulations, inflation was lower than expected,[1] investment earnings were higher than expected, or a change in closure and/or post-closure plans lowered the cost estimates.

6. Maintaining Assurance. The owner or operator is responsible for ensuring continuous compliance with the financial assurance regulations. Specifically, if the trustee institution enters bankruptcy, ceases operations, or loses its authority to act as a trustee, it no longer qualifies to act as a RCRA trustee. Arrangements for a new trustee or other financial assurance must be made by the owner or operator within 60 days after such an event.

---

[1] During the period of post-closure care, the post-closure cost estimates will not be adjusted for inflation, but lower inflation may affect the value of the trust fund or the cost of the remaining post-closure care.

If the owner or operator sells or transfers operating responsibility for the facility for which the trust fund provides financial assurance, the trust fund will not automatically transfer to the next owner or operator. Instead, the new owner or operator will have to provide new financial assurance for the facility. Of course, the new owner or operator can enter into an agreement with the old owner or operator by which the trust fund is transferred to the new owner or operator. This will require amendments to the trust agreement which must be approved by the trustee and the Regional Administrator. The Regional Administrator will not allow a trustee to release funds from a trust fund to an owner or operator until the new owner or operator meets the applicable financial responsibility requirements and the facility is in interim status or is issued a permit.

Finally, the owner or operator may substitute an alternate mechanism of financial assurance so long as there is no lapse in coverage. See Section E.4 of Chapter II.

7. Role of Trustee. The Trustee will usually prepare the trust agreement, Schedule A (according to the instructions of the owner or operator), Schedule B, and the certificate of acknowledgment. The trustee has control over the trust, can sue to protect it, and is responsible for its preservation. The trustee is responsible for annual valuations of the trust, for notifying the Regional Administrator if the owner or operator fails to make an annual payment, and for making payments out of the trust fund at the direction of the Regional Administrator. The trustee is responsible for errors in administering the trust resulting from not acting in good faith (e.g., willful negligence, gross misconduct, and violation of the prudent man standard).

A change in trustees does not affect the existence of the trust itself. The trustee may be changed if the owner or operator is dissatisfied with the performance of the trustee or if the trustee resigns; the trustee must be changed if the trustee institution enters bankruptcy or ceases to meet the qualifications. In either case, the trustee can be changed only upon agreement by the owner or operator, the trustee, and the Regional Administrator. The present trustee may not unreasonably withhold its permission to change trustees.[2] The successor trustee must be appointed by the owner or operator. If the owner or operator fails to do so, a trustee wishing to resign may request a court to appoint a successor trustee. The present trustee remains responsible until it has been replaced.

---

[2] See the discussion in Section B.2 of Chapter VI concerning when refusal to consent to an assignment of a RCRA insurance contract would be "unreasonable."

8. Drawing on the Trust Fund. After the beginning of final closure, the owner or operator may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. Similarly, bills for post-closure care may also be submitted for reimbursement. Within 60 days after receiving the bills, the Regional Administrator will instruct the trustee to make reimbursements, if the expenditures are in accordance with the closure or post-closure plan or are otherwise justifiable. The Regional Administrator will exercise judgment in determining what expenses are justifiable. Where the cost of closure appears to be significantly greater than the value of the trust fund, the Regional Administrator is empowered to withhold reimbursement from the trust fund until he has received satisfactory certification of completion of closure. See Section G of Chapter II.

The owner or operator remains responsible for all closure or post-closure costs and for the performance of closure and post-closure care, even if the funds available through the trust fund are exhausted.

9. Termination of the Trust Fund. The owner or operator should request the approval of the Regional Administrator to terminate the trust fund in two situations: (1) when alternate financial assurance has been substituted (see Section E.4 of Chapter II) and (2) when released from applicable RCRA financial requirements (see Section G of Chapter II). Upon receiving the Regional Administrator's written consent, the owner or operator should forward a copy of it to the trustee institution. The trust fund can only be terminated with the written consent of the Regional Administrator. The owner or operator should request the Regional Administrator to instruct the trustee to terminate the trust and to forward the remaining funds (after subtraction of fees and expenses) to the owner or operator. The owner or operator will also have to instruct the trustee to terminate the trust.

PERMITTED FACILITIES

Permitted facilities are subject to trust fund rules almost identical to those covering interim status. The major difference is in computing the amount of required annual payments. The formula (CE-CV)/Y is still used and CE is still the relevant current cost estimate, CV is still the current value of the trust fund, and Y is still the number of years remaining in the pay-in period. The pay-in period is defined differently, however. For permitted facilities, it is the term of the initial RCRA permit or the remaining operating life of the facility as estimated in the closure plan, whichever is shorter. Facilities that obtain permits after being in interim status will become subject to this permitted facility pay-in period; see example 4 in Attachment III-4. The formula will take into account payments made into the trust fund while the facility was in interim status. For new permitted facilities, this same permitted facility pay-in period applies.

The only other differences from interim status standards are (1) the trust agreement must be submitted to the Regional Administrator at least 60 days before waste is first received at the facility; (2) the initial payment into the trust fund must be made before hazardous waste is first received at the facility; and (3) a receipt from the trustee for this payment must be submitted by the owner or operator to the Regional Administrator before the initial receipt of hazardous waste.

C. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the duties of the Regional Office in reviewing trust funds for RCRA financial assurance and ensuring satisfaction of requirements. A summary checklist appears in Attachment III-2 at the end of this chapter.

REVIEWING INITIAL SUBMISSIONS

1. Qualifications of Trustee. The first step that EPA Regional Office staff must take is to ensure that the trustee is qualified. The easiest way to do this may be to maintain a current list of the qualified entities in the region. This list can be initially compiled by simply checking the qualifications of each trustee as trust agreements are submitted and compiling a list of the trustees that qualify. Additions can be made to this list as qualified entities are checked during the review of submissions. Necessary deletions from this list--because entities fail to continue to qualify--can be discovered by regular contact with the regulatory agencies listed in Exhibit III-3 and Appendix B.

2. Conformity to Other Requirements. The Regional Administrator will want to make certain that the following additional tasks have been accomplished by the appropriate dates:

- An originally signed duplicate of the trust agreement, including Schedules A and B, is submitted to the Regional Administrator;
- The trust agreement is signed by the owner or operator and the trustee and is properly acknowledged;
- The amount of coverage is adequate; and
- The first payment is made.

For facilities with interim status, all of this must be done by the effective date of the regulations. For new permitted facilities, the initial payment must be made and a receipt for this payment submitted to the Regional Administrator before hazardous waste is first received. The trust agreement itself must be submitted to the Regional Administrator 60 days before that date.

The wording of the trust agreement in all cases must be identical to that in the regulations; Regional Offices should proofread the wording of trust agreements to ensure conformity to requirements. The required wording of the trust agreement and examples of supporting documentation are given in Attachment III-3 at the end of this chapter.

3. Recordkeeping and Tracking Systems. As trust fund agreements are received, relevant information should be recorded including the name, address, and EPA Identification Number of the covered facilities; the name of the financial institution; amount of coverage for each facility and the effective date; and information verification procedures performed. Automatic data processing systems can be used for this. A list of trust funds in effect should be kept not only under the owner or operator's name, but also under the name of each financial institution so that, in case of bankruptcy or ineligibility or other reasons, it will be easy to determine which owners or operators need to obtain financial assurance elsewhere. This sytem can be used to keep track of mergers and changes in the names of financial institutions.

SUBSEQUENT RESPONSIBILITIES

4. Updating the Trust Fund. An important responsibility for the Regional Administrator will be to ensure that annual payments to the trust fund are being made during the pay-in period in the proper amount, no later than 30 days after each anniversary date of the first payment. There are three reasons for this: (1) the owner or operator is not required to submit receipts for annual payments into the fund; (2) the trustee must notify the Regional Administrator only of the failure of the owner or operator to make annual payments (i.e., an absence of a payment), not a payment that is too small; and (3) the trustee need not report failure to make payments due to increases in cost estimates after the pay-in period is completed. Therefore, the Regional Administrator will have to keep track of notifications of failures to make the required payments and to spot check (audit) those trust fund payments that have been made. To do such an audit, the Regional Administrator should:

(1) Obtain the closure plan and the current closure and post-closure cost estimates from the facility;

(2) Compute the value of each of the variables in the payment formula, (CE-CV)/Y, by using the plans, the cost estimates, and the most recent trust fund valuation;

(3) Determine the required payment from the formula; and

(4) Contact the trustee to find out if the amount the trustee actually received from the owner or operator was at least as great as the required payment. Note, however, that the trustee is not required to divulge this information and may be unwilling to do so.

Since the trustee is only required to send notice of non-payment during the pay-in period, the Regional Administrator may wish to notify trustees when the pay-in period is completed. After completion of the pay-in period, the owner or operator must still make additional deposits into the trust fund or obtain alternative financial assurance within 60 days after any change in the current cost estimates that makes the current cost estimates exceed the value of the trust. The Regional Administrator must ensure that these payments are made or alternative assurance obtained. Spot-checking may again be required.

As with any financial assurance mechanism, the closure and post-closure estimates will be adjusted annually for inflation and new estimates will be prepared when closure and/or post-closure plans are changed. Unlike most of the other mechanisms, however, the amount of assurance (the amount in the trust) will fluctuate depending upon the payments made into the trust and the investments made by the trustee. Thus, it may happen that the value of the trust exceeds the current cost estimates and the owner or operator will request the Regional Administrator to have the excees returned to him. The Regional Administrator must act on such requests within 60 days after receiving them. They should be granted and the trustee instructed to release the appropriate amount of funds after the Regional Administrator has checked that the current value of the trust exceeds the current cost estimates.

5. Maintaining the Trust Fund. The Regional Administrator will also be called upon to approve changes in trustees. Authorizing new trustees is a simple matter; the only requirement is that the new trustee be qualified.

The Regional Administrator will also want to check that existing trustees continue to remain qualified and do not enter bankruptcy. This, too, is not difficult since the financial status of qualified trustees can be checked regularly. A list of the trustees holding RCRA trusts should be kept on the HWDMS, not only under the owner or operator's name, but also under the trustee's name. This will make it easy to determine which owners or operators need to obtain alternate assurance when a trustee ceases to qualify or enters bankruptcy.

6. Drawing on the Trust Fund. A more difficult situation exists when release of funds is being requested as reimbursement for closure or post-closure expenses. Owners or operators may begin submitting requests for reimbursement of final closure expenses even while closure activities continue; they need not wait until closure is complete. For reimbursement, the Regional Administrator must insist upon itemized bills (as the regulations provide) and stay abreast of closure activities and how much remains in the trust fund. For both closure and post-closure care expenses, the Regional Administrator should only authorize reimbursement when the expenditures were in accordance with the plan or otherwise justifiable, but not even all expenses properly incurred should be reimbursed when requested. The regulations permit the Regional Administrator to withhold reimbursement until closure is completed if there is reason to believe that the cost of closure will significantly exceed the value of the trust fund. This allows financial

assurance to be maintained until completion of closure and can give an incentive to the owner or operator to complete closure. See Section G of Chapter II for further discussion. Withholding of reimbursement is not permitted for post-closure care expenses. Of course, the owner or operator remains responsible for all closure and/or post-closure costs even if the fund is exhausted.

The Regional Administrator must act on requests for release of funds discussed in this section within 60 days after receipt of the request for reimbursement.

7. Requests to Terminate the Trust Fund - The Regional Administrator may consent to the termination of the trust fund only (1) if alternate assurance is substituted (see Section E.4 of Chapter II) or (2) if the owner or operator is released from applicable RCRA financial requirements (see Section G of Chapter II). Consent must be in writing and may accompany the Regional Administrator's letter releasing the owner or operator from closure or post-closure financial assurance requirements. The Regional Administrator should instruct the trustee to terminate the trust and to forward the remaining funds (after subtraction of fees and expenses) to the owner or operator.

PERMITTED FACILITIES

There are two major areas in which interim status and permitted facilities differ: (1) the definition of the pay-in period and (2) the dates by which the first payment must be made into the trust fund and the trust agreement submitted to the Regional Administrator.

In calculating the required payments into the trust fund, the pay-in period for permitted facilities is the shorter of the term of the initial RCRA permit or the remaining operating life of the facility as estimated in the closure plan.

For new permitted facilities, the initial payment must be made and a receipt for this payment submitted to the Regional Administrator before hazardous waste is first received. The trust agreement itself must be submitted to the Regional Administrator 60 days before that date.

D. SOURCES OF FURTHER INFORMATION

Exhibit III-2 lists the regulatory authorities to contact if there is any doubt that a financial institution qualifies to be trustee of a RCRA trust. A copy of the regulations (see Exhibit III-1 above) themselves may be obtained from EPA Regional Administrators. Owners or operators are also encouraged to contact their state hazardous waste agencies to determine whether the state imposes any restrictions on trust funds as a means of establishing financial responsibility for hazardous waste facilities. (See Appendix B.)

National trade associations can supply information about financial institutions in general. Major national organizations include:

1. American Bankers Association
   1120 Connecticut Avenue, N.W.
   Washington, D.C. 20036
   (202) 467-4000
   Trade association of banks and trust companies.

2. Independent Bankers Association of America
   P.O. Box 267
   Sauk Centre, Minnesota 56378
   (612) 352-6546
   Association of medium size and smaller independent banks.

3. National Association of Mutual Savings Banks
   200 Park Avenue
   New York, New York 10017
   (212) 973-5432
   Trade association of mutual savings banks.

4. United States League of Savings Associations
   111 East Wacker Driver
   Chicago, Illinois 60601
   (312) 644-3100
   Trade association of savings and loan associations, cooperative banks, and state and local savings and loan association leagues.

5. Credit Union National Association
   5710 Mineral Point Road
   Box 431
   Madison, Wisconsin 53701
   (608) 231-4000
   Trade association of state credit union leagues.

6. Conference of State Bank Supervisors
   1015 Eighteenth Street, N.W., Suite 606
   Washington, D.C. 20036
   (202) 296-2840
   Organization of state officials responsible for the supervision of state-chartered banking institutions.

7. National Association of State Credit Union Supervisors
   1499 Chain Bridge Road, Suite 201
   McClean, Virginia 22101
   (703) 821-2243
   Organization of state credit union supervisors and state-chartered credit unions.

8. National Association of State Savings and Loan Supervisors
   1001 Connecticut Avenue, N.W., Suite 800
   Washington, D.C. 20036
   (202) 452-1523
   Organization of state savings and loan supervisors.

ATTACHMENT III-1

RCRA TRUST FUND CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(1) ___ Locate a financial entity willing to act as trustee that has the authority to act as trustee and is regulated and examined by a federal or state agency.

(2) ___ Make certain that the wording of the agreement is identical to the wording in the regulations (See Attachment III-3), that properly completed Schedules A and B are attached, and that the agreement is acknowledged in accordance with state requirements.

" ___ Attach Schedule A to the trust agreement listing the facilities and cost estimates covered by the trust fund and update Schedule A within 60 days after each change in cost estimates.

(3) ___ Discuss with the prospective trustee: (a) fees and taxes, (b) investment strategy, and (c) any common trust funds for which the trust fund qualifies.

(4) ___ For interim status facilities, by the effective date of the regulations, make the first payment into the trust fund and submit an originally signed duplicate of the trust agreement, including Schedules A and B and a certification of acknowledgment to the Regional Administrator.

" ___ For new permitted facilities: (1) the trust agreement must be submitted to the Regional Administrator at least 60 days before hazardous waste is first received at the facility; (2) the initial payment into the trust fund must be made before hazardous waste is first received at the facility; and (3) a receipt from the trustee for this payment must be submitted by the owner or operator to the Regional Administrator by this date.

(5) ___ During the pay-in period, make the required payments into the trust fund annually, no later than 30 days after the anniversary date of the first payment.

---

* The numbers correspond to the paragraph numbers in Section B.

ATTACHMENT III-1 (continued)

RCRA TRUST FUND CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

" ___ After the pay-in period is completed, make payment (or provide alternative assurance) within 60 days after any change in cost estimates that makes the current cost estimate exceed the value of the trust fund.

" ___ If the owner or operator wishes to object to the trustee's annual valuation statement, object, in writing, to the trustee's investment activities or to expenses levied against the trust fund within 90 days after receiving the statement.

" ___ Request a release of funds from the trust fund when the value of the trust fund exceeds the current cost estimates.

(6) ___ When the trustee enters bankruptcy or loses its authority to act as a trustee, obtain a new trustee or alternative financial assurance within 60 days.

(7) ___ If the owner or operator is dissatisfied with the performance of the old trustee, the old trustee resigns, or the old trustee ceases to qualify to act as trustee, appoint a new trustee, subject to agreement by the old trustee and the Regional Administrator.

(8) ___ When the owner or operator begins paying for final closure, submit itemized bills and request reimbursement from the trust fund.

" ___ When the owner or operator pays for post-closure care, submit itemized bills and request reimbursement from the trust fund.

(9) ___ Request approval to terminate the trust and release of remaining funds (1) when alternate assurance is substituted, and (2) when released from closure or post-closure financial assurance requirements by the Regional Administrator.

---

* The numbers correspond to the paragraph numbers in Section B.

ATTACHMENT III-2

RCRA TRUST FUND CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator should ensure that:

Paragraph Number *

(1) ___ The trustee financial institution is qualified.

(2) ___ For interim status facilities, by the effective date of the regulations:

- ___ An originally signed duplicate of the trust agreement, including Schedules A and B, is submitted to the Regional Administrator;
- ___ The trust agreement is signed by the owner or operator and the trustee;
- ___ The trust agreement is properly acknowledged;
- ___ The amount of coverage is adequate; and
- ___ The first payment is made.

" ___ For new permitted facilities: (1) the trust agreement must be submitted to the Regional Administrator at least 60 days before hazardous waste is first received at the facility; (2) the initial payment into the trust fund must be made before hazardous waste is first received at the facility; and (3) a receipt from the trustee for this payment must be submitted by the owner or operator to the Regional Administrator by this date.

" ___ The wording of the trust agreement is identical to that in the regulations.

(3) ___ Relevant information is recorded.

---

* The numbers correspond to the paragraph numbers in Section C.

ATTACHMENT III-2 (continued)

RCRA TRUST FUND CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *

(4) ___ Annual payments are being made during the pay-in period in the proper amount and no later than 30 days after each anniversary date of the first payment, using this auditing procedure:

  ___ Obtain the closure and/or post-closure cost estimates;

  ___ Compute the value of each variable in (CE-CV)/Y;

  ___ Determine the required payment;

  ___ Contact the trustee to allow a comparison of the actual payment with the required payment.

" ___ After completion of the pay-in period, additional deposits are made or alternative assurance obtained within 60 days after any change in the current cost estimates that makes the current cost estimates exceed the value of the trust.

" ___ Within 60 days after receiving a request for release of funds because the value of the trust exceeds the current cost estimates, the request is approved, but only when the fund actually exceeds the current cost estimates by the amount claimed.

(5) ___ Authorization is granted for a change in trustees only when the new trustee is qualified.

" ___ If existing trustees enter bankruptcy or do not remain qualified, alternate assurance is obtained within 60 days.

---

* The numbers correspond to the paragraph numbers in Section C.

ATTACHMENT III-2 (continued)

RCRA TRUST FUND CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *

(6) ___ Requests for reimbursement for closure and/or post-closure expenses are approved within 60 days after they are received, but only when itemized bills are submitted and the expenses are in accordance with the plan or otherwise justified.

" ___ If the Regional Administrator has reason to believe that the closure costs will significantly exceed the value of the closure trust fund, complete reimbursement is withheld until closure is completed.

(7) ___ Requests for termination of the trust and return of any funds remaining in the trust are approved in writing when (1) alternate financial assurance is substituted or (2) the owner or operator has been released from closure or post-closure financial requirements.

---

* The numbers correspond to the paragraph numbers in Section C.

ATTACHMENT III-3

REQUIRED WORDING FOR RCRA TRUST FUND AGREEMENT
40 CFR 264.151(a)

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of ______________" or "a national bank"], the "Trustee."

WHEREAS, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits

ATTACHMENT III-3 (continued)

REQUIRED WORDING FOR RCRA TRUST FUND AGREEMENT
40 CFR 264.151(a)

thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the EPA Regional Administrator from the Fund for closure and post-closure expenditures in such amounts as the EPA Regional Administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EPA Regonal Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

ATTACHMENT III-3 (continued)

REQUIRED WORDING FOR RCRA TRUST FUND AGREEMENT
40 CFR 264.151(a)

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited

ATTACHMENT III-3 (continued)

REQUIRED WORDING FOR RCRA TRUST FUND AGREEMENT
40 CFR 264.151(a)

therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

ATTACHMENT III-3 (continued)

REQUIRED WORDING FOR RCRA TRUST FUND AGREEMENT
40 CFR 264.151(a)

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of State].

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording

ATTACHMENT III-3 (continued)

REQUIRED WORDING FOR RCRA TRUST FUND AGREEMENT
40 CFR 264.151(a)

specified in 40 CFR 264.151(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

ATTACHMENT III-3 (continued)

SAMPLE CERTIFICATION OF ACKNOWLEDGMENT FOR RCRA TRUST FUND AGREEMENT (FROM 40 CFR 264.151(a), EMPHASIS ADDED)

The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §§264.143(a) and 264.145(a) or §§265.143(a) or 265.145(a) of this chapter. State requirements may differ on the proper content of this acknowledgment.

State of ____________________

County of ____________________

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

ATTACHMENT III-3 (continued)

SAMPLE SCHEDULE A

This Agreement demonstrates financial assurance for the following cost estimate(s) for the following facility(ies):

U.S. Environmental Protection Agency Identification Number of Facility	Name of Facility	Address of Facility	Cost Estimates for Which Financial Assurance Being Demonstrated by This Agreement	
	East Minor Facility	42 Main Street Los Tunas, California 90006	Closure	$110,000
			Post-Closure	$ 62,000
			Total	$172,000

The cost estimates listed here were last adjusted on July 1, 1982.

ATTACHMENT III-3 (continued)

SAMPLE SCHEDULE B

The Fund is established initially as consisting of the following property:

> $17,200 (seventeen thousand, two hundred dollars), as evidenced by Midtown National Bank Cashier's Check Number 14,282, dated August 1, 1982.

ATTACHMENT III-4

SAMPLE CALCULATIONS OF REQUIRED PAYMENTS INTO RCRA TRUST FUND

This attachment shows how the first two required payments into a trust fund are calculated for three sample facilities. Note that all calculations, trust fund values, and inflation factors are hypothetical.

Example 1

Assumptions:

(1) The facility has interim status.

(2) The trust fund is designed to cover both closure and post-closure care.

(3) The closure plan estimates that the remaining operating life of the facility is 10 years.

(4) The total current closure and post-closure cost estimates is $150,000.

(5) The inflation factor during the first year is 1.10.

Calculations:

All payments are calculated using the formula:

$$\frac{CE-CV}{Y}$$

Where

CE is the current cost estimate
CV is the current value of the trust fund, and
Y is the number of years remaining in the pay-in period.

For the first payment here,

CE = $150,000
CV = 0 (No payments into the trust fund have yet been made.)
Y = 10 (The pay-in period for interim status facilities is the shorter of 20 years or the remaining operating life of the facility.)

ATTACHMENT III-4 (continued)

SAMPLE CALCULATIONS OF REQUIRED PAYMENTS INTO RCRA TRUST FUND

Thus, the first payment is

$$\frac{CE-CV}{Y} = \frac{\$150{,}000-0}{10} = \$15{,}000$$

The second payment calculation requires the value of the trust fund after one year. Assume the trustee valued the investments and other assets comprising the trust at $16,500 (the value of the trust fund has increased because the fund has been invested for one year). The values for the second payment calculation are therefore:

CE = $150,000 x 1.10 (1.10 is the inflation factor.)
CV = $16,500
Y = 9 (One year has passed in the pay-in period.)

The second payment required is:

$$\frac{CE-CV}{Y} = \frac{\$165{,}000-16{,}500}{9} = \$16{,}500.$$

Example 2

Assumptions:

(1) The facility has interim status.

(2) The trust fund covers closure only.

(3) The remaining operating life is 25 years.

(4) The current closure cost estimate is $80,000.

(5) The inflation factor during the first year is 1.15.

Calculations:

For the first payment,

CE = $80,000
CV = 0
Y = 20 (20 years is shorter than the remaining operating life)

ATTACHMENT III-4 (continued)

SAMPLE CALCULATIONS OF REQUIRED PAYMENTS INTO RCRA TRUST FUND

The first payment is:

$$\frac{CE-CV}{Y} = \frac{\$80,000-0}{20} = \$4,000$$

To compute the second payment, assume that the value of the trust is only \$3,150 after the first year (the trust's investments were not very successful). The second payment can be calculated as follows:

$CE = 80,000 \times 1.15 = \$92,000$
$CV = \$3,150$
$Y = 19$

$$\frac{CE-CV}{Y} = \frac{\$92,000-\$3,150}{19} = \$4,676$$

Example 3

Assumptions:

(1) The facility has a 10-year permit.

(2) The trust fund covers both closure and post-closure care.

(3) The remaining operating life of the facility is 15 years.

(4) The total current cost-estimate is \$120,000.

(5) The inflation factor for the first year is 1.12.

Calculations:

For the first payment,

$CE = 120,000$
$CV = 0$
$Y = 10$

and

$$\frac{CE-CV}{Y} = \frac{\$120,000-0}{10} = \$12,000$$

ATTACHMENT III-4 (continued)

SAMPLE CALCULATIONS OF REQUIRED PAYMENTS INTO RCRA TRUST FUND

For the second payment, assume that the trust fund is worth \$12,600. The second payment can be calculated:

$CE = \$120,000 \times 1.12 = \$134,400$
$CV = \$12,600$
$Y = 9$

$$\frac{CE-CV}{Y} = \frac{\$134,400-\$12,600}{9} = \$13,533$$

Example 4

Assumptions:

(1) In year 1, the facility has interim status.

(2) By year 2, the facility obtains general status with a 10-year permit.

(3) The trust fund covers both closure and post-closure care.

(4) The remaining operating life of the facility is 15 years.

(5) The total current cost-estimate is \$150,000.

(6) The inflation factor during the first year is 1.11.

Calculations:

For the first payment,

$CE = \$150,000$
$CV = 0$
$Y = 15$

Thus the first payment is:

$$\frac{CE-CV}{Y} = \frac{\$150,000-0}{15} = \$10,000$$

ATTACHMENT III-4 (continued)

SAMPLE CALCULATIONS OF REQUIRED PAYMENTS INTO RCRA TRUST FUND

In the second year, the facility is in general status, and a new pay-in period will apply. The pay-in period is equal to the shorter of the remaining operating life of the facility or the term of the initial permit. The remaining operating life is equal to 14 years, while the permit term is 10 years; thus, the new pay-in period is 10 years.

To compute the second payment, assume that the trust fund is now valued at $10,800. The second payment can be calculated as follows:

$CE = \$150{,}000 \times 1.11 = \$166{,}500$
$CV = \$10{,}800$
$Y = 10$

and $$\frac{CE-CV}{Y} = \frac{\$166{,}500-\$10{,}800}{10} = \$15{,}570$$

IV. ESTABLISHING FINANCIAL RESPONSIBILITY USING SURETY BONDS

A. INTRODUCTION

This chapter describes how owners or operators can fulfill their RCRA financial requirements using SURETY BONDS. Surety bonds are common in business when one party, in order to protect itself in a transaction, insists that another party obtain such a bond. Only RCRA surety bonds are discussed here, however. A surety bond is a contract which an owner or operator (sometimes called the PRINCIPAL) can enter into with a qualified surety company (called the SURETY). Under this contract, the surety guarantees to EPA (sometimes called the OBLIGEE) that the closure and/or post-closure obligations of the owner or operator will be fulfilled. Of course, the owner or operator must pay the surety for this guarantee, because the surety will be liable for these obligations should the owner or operator fail to fulfill them.

The RCRA regulations allow two types of surety bonds, FINANCIAL GUARANTEE BONDS and PERFORMANCE BONDS, although this latter type of bond can be used only at permitted facilities and can not be combined with other financial assurance mechanisms. Financial guarantee bonds, as the name implies, simply assure EPA that, if the owner or operator fails to fund the STANDBY TRUST FUND or provide appropriate alternative financial assurance for closure and/or post-closure care, the surety will fund the standby trust fund up to a stated amount. Performance bonds, on the other hand, may be carried out either by paying for or actually providing closure and/or post-closure care. Both types of bonds limit the liability of the surety to the face amount of the bond, called the PENAL SUM. As cost estimates increase, this penal sum may be increased upon agreement of the owner or operator and the surety. The bond may provide, by way of an optional RIDER, that the penal sum can be increased up to 20 percent in any year, without a new agreement between the parties.

EPA expects, on the basis of information received from sureties, that very few sureties will be willing to write surety bonds, at least initially, and that many of those sureties that will write them will do so only for their largest, most creditworthy clients. The long-term nature of the obligation guaranteed, the requirement that the surety pay the penal sum in the event the surety attempts to cancel the bond and the owner cannot obtain alternate assurance, and the unfamiliarity of sureties with the hazardous waste industry all make these bonds unattractive to sureties. Nevertheless, owners and operators have asked that surety bonds be allowed as a financial assurance mechanism. EPA believes that, in the future, the availability of RCRA surety bonds may increase as more facilities are permitted, especially in instances where remaining facility life is relatively brief and the time of closure is highly predictable.

The regulations pertaining to RCRA surety bonds are as follows:

EXHIBIT IV-1

RCRA SURETY BOND REGULATIONS

Topic	Interim Status	Permitted Facilities
Closure Bond		
• Financial Guarantee Bond	40 CFR §265.143(b)	40 CFR §264.143(b)
• Performance Bond	NA	40 CFR §264.143(c)
Post-Closure Bond		
• Financial Guarantee Bond	40 CFR §265.145(b)	40 CFR §264.145(b)
• Performance Bond	NA	40 CFR §264.145(c)
Wording of Bonds		
• Financial Guarantee Bond (closure and/or post-closure)	40 CFR §264.151(b)	40 CFR §264.151(b)
• Performance Bond (closure and/or post-closure)	NA	40 CFR §264.151(c)

Source: Title 40, Code of Federal Regulations (CFR).

NA: Not applicable.

B. RCRA SURETY BOND REQUIREMENTS

This section describes the responsibilities of owners or operators in fulfilling the surety bond requirements established under RCRA. Except for the last part of this section dealing with permitted facilities, the discussion here covers only financial guarantee bonds, since they are the only type of bond allowed at interim status facilities. Apart from the few differences noted in the last section, the requirements for financial guarantee bonds also apply to performance bonds. A checklist of the responsibilities of owners or operators appears as Attachment IV-1 at the end of this chapter.

INITIAL RESPONSIBILITIES OF THE OWNER OR OPERATOR

1. Qualifications for Surety Company. An owner or operator wishing to use a surety bond to fulfill its RCRA closure and/or post-closure requirements must enter into a contract with a qualified surety. Qualified sureties are those listed by the U.S. Department of the Treasury in its CIRCULAR 570, which is published annually on approximately July 1 and updated periodically in the *Federal Register*. To obtain the most up-to-date information, owners or operators can contact the Audit Staff of the Department of the Treasury (telephone number: (202) 634-5010). Care should be used in consulting Circular 570 since many sureties have similar names.

Circular 570 also lists the maximum amount which each surety can guarantee in one bond, called the UNDERWRITING LIMITATION. A surety may only issue a surety bond exceeding this amount when it brings another company into the surety agreement to help share the risk. Even several sureties acting together may not exceed the total of their individual underwriting limitations, however. Finally, Circular 570 lists the states in which each qualified surety is licensed to enter into a surety bond; a RCRA surety bond must be signed in one of those states.

In addition, owners or operators must also identify a financial institution qualified to establish a STANDBY TRUST FUND (discussed below). The qualifications of trustee institutions are described in Section B.1 of Chapter III.

2. Wording and Amount of Assurance. The wording required for surety bonds is specified in the regulations and both the owner or operator and the surety must certify that the bond matches this wording exactly. The bonds are shown in Attachments IV-3 and IV-4 at the end of this chapter. The penal sum of a RCRA surety bond, together with any amount being assured by other mechanisms (see Section B of Chapter II for information on combinations of mechanisms), must be in an amount at least equal to the current closure and post-closure cost estimates.

The owner or operator must also establish a standby trust fund[1] to accompany each RCRA surety bond. The moneys necessary to pay for closure and/or post-closure care will be disbursed from this fund. The fund is often initially established with a NOMINAL SUM, and must be funded in an amount equal to the penal sum of the bond before the beginning of final closure of the facility or within 15 days after an order by the Regional Administrator or a U.S. court to begin closure (See Attachment IV-3). Any payments made under the bond will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. A standby trust fund is not to be confused with an ordinary RCRA trust fund (described in Chapter III), although a standby trust is subject to the same requirements except that:

(a) annual payments into the standby trust fund are not required (only the nominal initial payment mentioned above is usually made);

(b) Schedule A of the trust agreement need not be updated;

(c) Annual valuations by the trustee are not required; and

(d) The trustee need not send notices of nonpayment.

A standby trust fund is also required with a letter of credit. The standby trust fund is not a financial assurance mechanism under RCRA, it merely facilitates drawing on surety bonds and letters of credit that are used as financial assurance. The standby trust fund must be worded exactly as required for trust funds. See Attachment III-3 and discussion in Section B.2 of Chapter III.

3. Obtaining a Surety Bond. The first step an owner or operator should take in approaching a broker or agent for a surety company is to check that the broker or agent is authorized by a qualified surety to issue RCRA bonds in the amount desired. (The owner or operator can check the qualifications of sureties in CIRCULAR 570, as discussed above.) Sureties give brokers and agents authority to sell surety bonds for them in a written document called a POWER OF ATTORNEY. If the owner or operator has any doubt about the authority of the broker to act on the surety's behalf, to issue RCRA bonds, or to issue bonds in the amount needed, he should ask for a copy of the power of attorney.

---

[1] Even if a combination of financial assurance mechanisms is used, only one trust fund is necessary. If an owner or operator uses a trust fund together with a surety bond, the trust fund may be used as the standby trust fund. If a financial guarantee bond and letter of credit are both used, one standby trust fund is sufficient. Remember, however, that a performance bond may not be used in combination with other mechanisms.

The broker or agent will undoubtedly ask for detailed information on the facility and the owner or operator applying for the surety bond. This information may include any of the financial and operating data listed and the facility visit mentioned in Section D of Chapter II.

Once the broker or agent evaluates this information, he will be able to tell the owner or operator if a surety bond can be issued and if so, on what terms. The terms may include not only the premiums required but also a requirement that the owner or operator provide a certain amount of COLLATERAL to reduce the surety's risk. Even if collateral is not required, the surety may be willing to lower its premiums if collateral is provided voluntarily. The owner or operator will probably also want the optional rider that is permitted by the regulations. This could save it from having to renegotiate a new surety bond each year that cost estimates increase.

4. Submission of Documents to EPA. To complete the surety bond, both the surety and the owner or operator will have to sign it; someone properly authorized to act on the behalf of either or both parties may sign instead. The owner or operator must then submit the surety bond and an ORIGINALLY SIGNED DUPLICATE of the standby trust agreement to the Regional Administrator before the effective date of the regulations.

SUBSEQUENT RESPONSIBILITIES OF THE OWNER OR OPERATOR

5. Updating Coverage. During the operating life of the facility, when closure or post-closure cost estimates are adjusted due to inflation or new estimates are prepared because of a change in closure and/or post-closure plans, the owner or operator is responsible for ensuring either that the bond's penal amount is increased sufficiently or that other financial assurance is given. This must be done--and evidence of the increase in the penal sum submitted to the Regional Administrator--within 60 days after the increase in cost estimates. Further increases in financial assurance are not required after closure.

The bond may (but is not required to) provide for an optional RIDER to permit increase in the penal sum by up to 20% per year. This rider allows an owner or operator to increase the amount of its coverage without having to renegotiate for additional surety bond coverage each time the closure or post-closure cost estimates increase. If there is no rider or the rider is not sufficiently large, the owner or operator may nevertheless agree with the surety to increase the face amount. Alternatively, the owner or operator may obtain another financial responsibility instrument to cover the increase (combinations of instruments covering one facility are discussed in Section B of Chapter II).

The regulations provide that the owner or operator may apply to the Regional Administrator for a decrease in the amount of bond coverage if the cost estimates decrease. The Regional Administrator will probably require supporting documentation such as the closure and/or post-closure plans and cost estimates in order to respond to a request to decrease coverage. This is further described in Section E.1 of Chapter II.

6. Maintaining Assurance. The owner or operator is required to obtain alternative financial responsibility assurance within 60 days after bankruptcy of the surety or the removal of the surety's name from Circular 570.

In addition, assurance must be maintained until ownership of or operating responsibility for the facility changes, and the new owner or operator has met the applicable financial responsibility requirements.

Finally, the owner or operator may substitute an alternate mechanism of financial assurance so long as there is no lapse in coverages. See Section E.4 of Chapter II.

7. Cancellation of the Surety Bond by the Issuer. The surety company may also cancel the bond. In order to exercise this right, a surety company must send notices of cancellation to both the owner or operator and the Regional Administrator. Cancellation may not occur during the 120 days beginning on the date of receipt of these notices. The owners or operator will have 90 days to provide alternate financial assurance and obtain written approval from the Regional Administrator of the new assurance. See Section E.3 of Chapter II. If the owner or operator fails to provide this assurance and obtain such approval within the 90 days, the Regional Administrator will direct the surety to pay the penal sum into the standby trust.

8. Drawing on Funds for Closure and Post-Closure. Financial guarantee bonds are designed to guarantee that funds will be available to pay for closure and post-closure care. Thus, if the owner or operator does not fulfill its obligation to fund the standby trust fund in the amount of the penal sum or to obtain alternative financial assurance when required, the surety will be responsible for funding the standby trust fund. Specifically, the surety will be required to pay the penal sum of the bond into the standby trust in these circumstances:

a. The owner or operator has failed to fund the standby trust fund in the amount of the cost estimate for closure and/or post-closure care before the beginning of final closure of the facility;

b. The Regional Administrator or a court has ordered closure to begin and the owner or operator has not funded the standby trust within 15 days; or

c. The surety has sent notice of cancellation of the bond and the owner or operator has not obtained alternate financial assurance within 90 days.

If the owner or operator properly funds the standby trust fund or otherwise fulfills its obligations under the regulations, funds will not be drawn from the surety bond.

9. Termination of Bond. The owner or operator should request the approval of the Regional Administrator to terminate the bond in two situations: (1) when alternate financial assurance has been substituted (see Section E.4 of Chapter II) and (2) when released from applicable RCRA requirements (see Section G of Chapter II). Upon receiving the Regional Administrator's written consent, the owner or operator should forward a copy of it to surety along with a request that the bond be terminated. The surety bond can only be terminated with the written consent of the Regional Administrator. At the same time, the owner or operator should request the Regional Administrator to approve the termination of the standby trust fund unless the owner or operator is maintaining assurance with a letter of credit and without a trust fund. Procedures for terminating the standby trust fund are identical to the procedures for terminating trust funds, discussed in Section B.9 of Chapter II.

PERMITTED FACILITIES

There are only a few differences between interim status and permitted facilities with respect to financial assurance through surety bonds. The main difference is the types of bonds allowed. Financial guarantee bonds may be used at both interim status and permitted facilities and may be used in combination with other financial assurance mechanisms; performance bonds, however, may be used only for permitted faciliites, not for those with interim status, and they may not be used in combination with other financial assurance mechanisms.

Performance bonds assure performance in accordance with closure and/or post-closure plans and other permit requirements. Upon default by the owner or operator, a surety may fulfill its obligations under such a bond by either securing performance in accordance with the plans or by depositing the penal sum into the standby trust.

In many respects, performance bonds are like financial guarantee bonds, although there are some differences. The owner or operator may request a reduction in the penal sum of a performance bond in the same manner as for a financial guarantee bond. With a performance bond covering post-closure care, such a request may even be made during the period of post-closure care.

Performance bonds state that the surety will either have to perform closure and/or post-closure care (in accordance with (1) the permit requirements, (2) the plans, and (3) RCRA regulations) or pay the penal sum into the standby trust fund in the following circumstances:

a. The owner or operator fails to fulfill its closure and/or post-closure obligations, even though closure may occur sooner than expected or the requirements in the plans, regulations, and/or permit have changed; or

b. The surety has sent notice of cancellation of the bond and the owner or operator has not obtained alternate financial assurance within 90 days.

The only other major difference between the surety bond requirements for permitted facilities and those with interim status is that for new permitted facilities, the surety bond must be submitted to the Regional Administrator at least 60 days before the date on which hazardous waste is first received at the site and the bond must be effective before the date on which hazardous waste is first received.

C. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the duties of the Regional Office in reviewing surety bonds for RCRA financial assurance and ensuring satisfaction of requirements. A summary checklist appears in Attachment IV-2.

REVIEWING INITIAL SUBMISSIONS

1. Qualifications of Surety and Broker or Agent. The first step that the Regional Administrator must take is to ensure that the surety is qualified. Circular 570 (published annually on approximately July 1) must be reviewed to check that the surety is listed, is licensed to do business in the state in which the bond is signed, and has an underwriting limitation equal to or larger than the bond amount. Because many sureties have similar names, great care should be exercised in consulting Circular 570. The most recent information can be obtained by contacting the Audit Staff of the Department of the Treasury (telephone number: (202) 634-5010). The bond amount can exceed the surety's underwriting limitation if the surety properly indicates that other sureties are sharing the risk. In particular, if the surety is using REINSURANCE, a Treasury reinsurance form must be submitted with the bond or within 45 days thereafter. If COSURETIES are being used, the original bond must reflect that fact. In all cases, the Regional Administrator will want to ensure that the total underwriting limitation of all sureties involved is not exceeded.

For each surety bond submitted, the Regional Administrator should request to see the broker or agent's POWER OF ATTORNEY and review it to make certain that the broker or agent has authority to act for the surety on this type of bond (hazardous waste) and in the amount of the bond.

The qualifications of the trustee institution for the standby trust fund must also be verified. The qualifications required are the same as for the RCRA trust fund. See Section C.1 of Chapter III for procedures.

2. Conformity to Other Requirements. For interim status facilities, the financial guarantee bond must establish financial assurance by the effective date of the financial responsibility regulations. For permitted facilities, the effective date of the bond must be no later than the date that hazardous waste is first received at the site and the bond must be submitted to the Regional Administrator at least 60 days before that date. In either case, the wording of the surety bond must be identical to that specified in the regulations and signed by the appropriate parties. It must also be accompanied by an originally signed duplicate of the standby trust agreement (See Section B, Part 2 of this chapter). The penal sum of the bond must at least equal the closure and/or post-closure cost estimates unless additional assurance has been properly submitted.

3. Recordkeeping and Tracking Systems. As surety bonds and standby trust agreements are received, relevant information should be recorded including the name, address, and EPA Identification Number of the covered facilities; the name of the surety, bond number, and trustee; amount of coverage for each facility and the effective date; and information verification procedures performed. Automatic data processing systems can be used for this. A list of surety bonds in effect should be kept not only under the owner or operator's name, but also under the name of each surety company and trustee institution so that, in case of bankruptcy or ineligibility or other reasons, it will be easy to determine which owners or operators need to obtain financial assurance elsehwere. This system can be used to keep track of mergers and changes in the names of sureties.

SUBSEQUENT RESPONSIBILITIES

4. Updating Surety Bonds. As cost estimates for closure and post-closure care are adjusted annually for inflation or revised based on new plans, the Regional Administrator has several tasks. First, the Regional Administrator will need to check that increases in cost estimates are covered within 60 days by increases in the penal sum of surety bonds or by other added financial assurance and that owners and operators have submitted evidence of any increases in the penal sum. Automated data processing can be used to assist in this task. See Chapter II, Section I.

Second, while increases in coverage are mandatory when cost estimates increase during the operating life of the facility, decreases in coverage are not required when cost estimates decrease. The Regional Administrator should allow the amount of a performance bond for post-closure care to be decreased after the facility is closed only if the owner or operator demonstrates that the amount of the bond exceeds the remaining cost of post-closure care. Future inflation rates are uncertain and cost estimates are not subject to increase due to inflation after closure. See Section E of Chapter II for a more detailed discussion.

5. Maintaining Assurance. Regional Administrators will have to maintain up-to-date lists of what sureties are currently listed on Circular 570, the states where they are licensed, and what their underwriting limitations are. One person in the office should be made responsible for regularly updating information on qualifying sureties based on the notices regarding sureties sent by EPA headquarters. In addition, a list of surety bonds in effect must be kept on the HWDMS not only under the owner or operator's name, but also under each surety's name so that in the case of bankruptcy or other reason for a financial institution failing to continue to qualify under the RCRA regulations, it is easy to determine which owners or operators need to obtain financial assurance elsewhere. This system could also be used to keep track of mergers and changes in the names of sureties. Automated data processing can be used to assist these efforts and can be particularly useful in helping the Regional Administrator assure that alternative assurance is obtained within 60 days after the surety becomes bankrupt or otherwise ceases to qualify. See Section I of Chapter II.

In the event of transfer of ownership or operation of a facility, the Regional Administrator should verify that assurance maintained until the new owner or operator satisfies the financial requirements.

The Regional Administrator should approve requests to use alternate assurance mechanisms if no lapse in coverage will result.

6. Cancellation of the Surety Bond by the Issuer. Sureties may not cancel RCRA surety bonds until after they send notice of cancellation to both the owner or operator and the Regional Administrator. Cancellation may not occur during the 120 days beginning on the date of receipt of these notices. The Regional Administrator will have to ensure that owners or operators obtain acceptable alternative means of financial assurance within 90 days after receipt of these notices. Cancellation will only be allowed if the owner or operator provides other financial assurance within this period. If it is not obtained, the surety must fulfill its obligations under the bond.

Upon receipt of a notice from a surety, Regional Office staff should contact the owner or operator to determine (1) the date it received the notice from the insurer and (2) its plans to provide alternate assurance or fund the standby trust fund. Both pieces of information will be essential for determining the nature and timing of future agency action.

7. Drawing on the Surety Bond. The Regional Administrator will have to make demand upon the surety to fulfill its obligations under a financial guarantee bond when:

a. The owner or operator has failed to fund the standby trust fund in the amount of the cost estimate for closure and/or post-closure care before the beginning of final closure of the facility;

b. The Regional Administrator or a court has ordered closure to begin and the owner or operator has not funded the standby trust within 15 days; or

c. The surety has sent notice of cancellation of the bond and the owner or operator has not obtained alternate financial assurance within 90 days.

If possible, the Regional Administrator should notify the trustee of the standby trust in advance of expected payments into the trust. Payments out of the standby trust will be made as specified in Section C.5 of Chapter III on trust funds.

8. Requests to Terminate the Surety Bond. The Regional Administrator may consent to the termination of the surety bond only (1) if alternate assurance is substituted (see Section E.4 of Chapter II) or (2) if the owner or operator is released from applicable RCRA financial requirements (see Section G of Chapter II). Consent must be in writing and may accompany the Regional Administrator's letter releasing the owner or operator from closure or post-closure financial assurance requirements.

At the same time, the Regional Administrator may consent to the termination of the standby trust fund unless the owner or operator is maintaining assurance with a letter of credit and without a trust fund. Procedures for terminating the standby trust fund are identical to the procedures for terminating trust funds, discussed in Section B.9 of Chapter III.

PERMITTED FACILITIES

The two major differences between facilities with permits and with interim status are (1) performance bonds are allowed for permitted facilities and (2) surety bond for a new permitted facility must be submitted to the Regional Administrator at least 60 days before the date on which hazardous waste is first received at the site and must be effective before the date on which hazardous waste is first received. Of course, performance bonds are significantly different than financial guarantee bonds as explained in Section B of this chapter. First of all, performance bonds may not be used together with other financial assurance mechanisms to cover one cost estimate. Second, a surety may fulfill its obligations under a performance bond either by securing performance in accordance with the plans or by depositing the penal sum into the standby trust fund. The surety will have to fulfill its obligations in the following circumstances:

a. The owner or operator fails to fulfill its closure and/or post-closure obligations, even though closure may occur sooner than expected or the requirements in the plans, regulations, and/or permit have changed; or

b. The surety has sent notice of cancellation of the bond and the owner or operator has not obtained alternate financial assurance within 90 days.

Finally, with a financial guarantee bond, the Regional Administrator can easily determine whether the surety has fulfilled its obligations -- the surety has either funded the standby trust or it has not. With a performance bond, the Regional Administrator's task is not so easy if the surety undertakes performance instead of funding the standby trust. The Regional Administrator will need to oversee the surety's performance in such cases; EPA Headquarters guidance will be available for such purposes on a case-by-case basis.

D. SOURCES OF FURTHER INFORMATION

Circular 570 (the June 30, 1981, version is at 46 Federal Register 33962), its updates available through the audit staff of the U.S. Department of Treasury (telephone number: (202) 634-5010), and the Treasury Department lists of sureties with deteriorating financial conditions are vital sources of information that all Regional Offices should have.

Another, more technical, document is Circular 297 of the Treasury Department that contains the Treasury regulations governing sureties doing business with the United States. These regulations were promulgated pursuant to Title 6 of the U.S. Code, Sections 6-13. They could be useful to answer specific questions that may arise concerning sureties.

National trade associations are an additional source of information. Major organizations concerned with surety bonds are:

1. National Association of Surety Bond Producers
   5454 Wisconsin Avenue
   Suite 1625
   Chevy Chase, Maryland 20015
   (301) 986-4166

   Trade association of surety bond agents.

2. Surety Association of America
   100 Wood Avenue, South
   Iselin, New Jersey 08830
   (201) 494-7600

   Trade association of surety companies.

3. National Association of Insurance Commissioners
350 Bishops Way
Brookfield, Wisconsin 53005
(414) 784-9540

Organization of state insurance commissioners, who are responsible for the state regulation of surety companies and their agents.

ATTACHMENT IV-1

RCRA SURETY BOND CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *	
(1) ___	Seek out an agent or a broker of a qualified surety, namely, a surety that is listed on Circular 570, is licensed to transact business in the state, and whose underwriting limit is sufficient (either alone or acting with other sureties) to cover the cost estimates for which assurance is sought.
" ___	Identify a qualified trustee institution.
(2) ___	Obtain the right type of bond--only financial guarantee bonds are acceptable for interim status sites, while both financial guarantee bonds or performance bonds are allowed at permitted facilities.
" ___	Check that the penal sum is correct and that the wording of the agreement is identical to the wording in the regulations.
" ___	Establish a standby trust worded exactly as required by the regulations.
(3) ___	If there is any doubt about the agent's or broker's authority to act for a qualified surety, check the agent or broker's power of attorney to ensure that the agent or broker has authority to act on behalf of the surety, to issue RCRA surety bonds, and to issue surety bonds in the amount needed.
(4) ___	For interim status facilities, sign the bond and standby trust papers, including Schedules A and B and the certification of acknowledgment, and submit them to the Regional Administrator by the effective date of the regulations.
" ___	For new permitted facilities, the bond must be submitted to the Regional Administrator at least 60 days before the date on which hazardous waste is first received at the site and the bond must be effective before the date on which hazardous waste is first received.

---

* The numbers correspond to the paragraphs in Section B.

ATTACHMENT IV-1 (continued)

RCRA SURETY BOND CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *	
(5) ___	Within 60 days after cost estimates increase, obtain additional coverage or an alternative method of assurance and submit evidence to the Regional Administrator of the increase in coverage.
" ___	When cost estimates decrease, apply to the Regional Administrator for a decrease in coverage.
(6) ___	Within 60 days of bankruptcy of the surety or the surety ceasing to be listed in Circular 570, obtain alternative coverage and inform the Regional Administrator.
(7) ___	Obtain alternative assurance within 90 days after receipt by both the owner or operator and the Regional Administrator of notice of cancellation.
(8) ___	To avoid having funds drawn from the surety bond, either fund the standby trust fund (before the beginning of final closure or within 15 days after an order to begin closure) or obtain alternative financial assurance within 90 days after receipt of notice of cancellation from the surety.
(9) ___	Request approval to terminate the bond (1) when alternate assurance is substituted, and (2) when released from closure or post-closure financial assurance requirements by the Regional Administrator.

---

* The numbers correspond to the paragraphs in Section B.

ATTACHMENT IV-2

RCRA SURETY BOND CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator must ensure that:

Paragraph Number *

(1) ___ At a minimum, the surety is listed in Circular 570, is licensed in the state, and has a sufficiently large underwriting limitation (or shares the risk with other sureties or reinsurors and the combined underwriting limitation is not exceeded).

" ___ The broker or agent's power of attorney is reviewed to be certain that the broker or agent is authorized by the surety to issue RCRA bonds in the amount needed.

" ___ The trustee institution for the standby trust is qualified.

(2) ___ For interim status facilities, the bond is received and effective by the effective date of the regulations.

" ___ For new permitted facilities, the bond is submitted to the Regional Administrator at least 60 days before the date on which hazardous waste is first received at the site and the bond is effective before the date on which hazardous waste is first received.

" ___ The wording of the bond is identical to the wording specified in the regulations.

" ___ An originally signed duplicate of the standby trust agreement, including Schedules A and B and a certification of acknowledgment, accompanies the bond.

" ___ Only financial guarantee bonds are accepted for facilities with interim status; either financial guarantee bonds or performance bonds may be accepted for permitted facilities.

" ___ The penal sum equals or exceeds the cost estimates, or other assurance is also provided.

(3) ___ Relevant information is recorded.

---

* The numbers correspond to the paragraphs in Section C.

ATTACHMENT IV-2 (continued)

RCRA SURETY BOND CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *

(4) ___ Increases in cost estimates are covered within 60 days by increases in the penal sum of surety bonds or other added financial assurance.

" ___ Decreases in surety bond penal sums are approved only when sufficient coverage will remain.

(5) ___ The Regional Office keeps track of which sureties enter bankruptcy or cease to be listed in Circular 570 and ensures that owners or operators obtain alternate assurance within 60 days after such events.

(6) ___ The owner or oprator is contacted following notice from the surety of intent to cancel.

" ___ The owner or operator obtains alternative means of financial assurance within 90 days after receipt by the owner or operator and the Regional Administrator of notice of cancellation of a surety bond by a surety.

(7) ___ Demand is made upon the surety to fulfill its obligation under the surety bond when the conditions specified in the bond occur.

" ___ If possible, the trustee of the standby trust is notified in advance of expected payments into the trust.

(8) ___ Requests to terminate the bond are approved in writing when (1) alternate financial assurance is substituted or (2) the owner or operator has been released from closure or post-closure financial requirements.

---

* The numbers correspond to the paragraphs in Section C.

ATTACHMENT IV-3

REQUIRED WORDING FOR RCRA FINANCIAL GUARANTEE BOND (40 CFR 264.151(b))

Date bond executed: ____________________

Effective date: ____________________

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: ________________

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: ____________________

Total penal sum of bond: $________________

Surety's bond number: ________________

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit(s) or interim status, and

ATTACHMENT IV-3 (continued)

REQUIRED WORDING FOR RCRA FINANCIAL GUARANTEE BOND (40 CFR 264.151(b))

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin closure is issued by an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective

ATTACHMENT IV-3 (continued)

REQUIRED WORDING FOR RCRA FINANCIAL GUARANTEE BOND (40 CFR 264.151(b))

until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

ATTACHMENT IV-3 (continued)

REQUIRED WORDING FOR RCRA FINANCIAL GUARANTEE BOND
(40 CFR 264.151(b))

Corporate Surety(ies)

[Name and address]

State of incorporation: ____________________

Liability limit: $____________________

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $____________________

ATTACHMENT IV-4

REQUIRED WORDING FOR RCRA PERFORMANCE BOND
(40 CFR 264.151(c))

Date bond executed: ____________________

Effective date: ____________________

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: ____________________

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: ____________________

Total penal sum of bond: $____________________

Surety's bond number: ____________________

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

ATTACHMENT IV-4 (continued)

REQUIRED WORDING FOR RCRA PERFORMANCE BOND
(40 CFR 264.151(c))

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the closure requirements of 40 CFR Part 264, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the EPA Regional Administrator.

Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the post-closure requirements of 40 CFR Part 264, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the EPA Regional Administrator.

ATTACHMENT IV-4 (continued)

REQUIRED WORDING FOR RCRA PERFORMANCE BOND (40 CFR 264.151(c))

Upon notification by an EPA Regional Administrator that the Principal has failed to provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264, and obtain written approval of such assurance from the EPA Regional Administrator(s) during the 90 days following receipt by both the Principal and the EPA Regional Administrator(s) of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the EPA Regional Administrator.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

ATTACHMENT IV-4 (continued)

REQUIRED WORDING FOR RCRA PERFORMANCE BOND
(40 CFR 264.151(c))

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(c) as such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: ______________________

Liability limit: $____________________________

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $______________________________

V. ESTABLISHING FINANCIAL RESPONSIBILITY USING LETTERS OF CREDIT

A. INTRODUCTION

A LETTER OF CREDIT is a mechanism by which the credit of one party, such as a bank, is extended on behalf of a second party, called the ACCOUNT PARTY, to a third party, the BENEFICIARY. The first party, the ISSUER, allows the beneficiary to draw funds upon the presentation of documents in accordance with the terms of the letter of credit. In a RCRA letter of credit, the owner or operator is the account party, the financial institution is the issuer, and the EPA is the beneficiary.

The purpose of a RCRA letter of credit is to guarantee availability of funds for closure and/or post-closure care. The issuer offers this assurance in exchange for a fee paid by the owner or operator. The owner or operator also undertakes to repay, with interest, any funds drawn through the letter of credit. While EPA specifies the wording of the letter, the terms of the credit arrangement between the owner or operator and the issuer will depend on individual circumstances and negotiations. If an owner or operator has a good relationship with a bank, a letter of credit may be a desirable method of establishing financial responsibility under RCRA.

The regulations pertaining to RCRA letters of credit are as follows:

EXHIBIT V-1

RCRA LETTER OF CREDIT REGULATIONS

Topic	Interim Status	Permitted Facilities
Closure Letter of Credit	40 CFR §265.143(c)	40 CFR §264.143(d)
Post-Closure Letter of Credit	40 CFR §265.145(c)	40 CFR §264.145(d)
Wording of Letter of Credit	40 CFR §264.151(d)	40 CFR §264.151(d)

Source: Title 40, Code of Federal Regulations (CFR).

B. REQUIREMENTS FOR USING RCRA LETTERS OF CREDIT

This section outlines the requirements for using letters of credit, laying out the responsibilities of owners or operators. A checklist of these responsibilities appears in Attachment V-1 at the end of this chapter.

INITIAL RESPONSIBILITIES OF THE OWNER OR OPERATOR

1. Qualifications for Issuing Institution. The issuing institution must be an entity which has the authority to issue a letter of credit, and whose letter of credit operations are regulated and examined by a federal or state agency (e.g., a bank or other financial institution). All domestic commercial banks and some mutual savings banks, foreign banks, credit unions, and savings and loan associations satisfy this requirement. Owners or operators should confirm qualifications of a prospective issuer with the appropriate regulatory authority (see Exhibit V-2 and Appendix B).

In addition, owners or operators must also identify a financial institution qualified to establish a STANDBY TRUST FUND (discussed below). The qualifications of trustee institutions are described in Section B.1 of Chapter III.

2. Wording and Amount of Assurance. RCRA letters of credit must be expressly IRREVOCABLE for an initial period of at least one year, and must provide for AUTOMATIC EXTENSIONS of at least one year. The wording of the letter of credit must be identical to that required by the regulations in force on the date of issuance. The letter of credit must also be effective by the effective date of the regulations. Attachment V-3 shows the required wording of a RCRA letter of credit.

The amount of the letter of credit must, at a minimum, equal the CURRENT COST ESTIMATES for closure and/or post closure care. Of course, if the letter of credit is combined with another mechanism (see Section B of Chapter II), the combined coverage must at least equal the cost estimate. The initial amount of coverage may be larger than the cost estimate in order to accommodate expected revisions in the estimate due to inflation.

An owner or operator who uses a letter of credit to satisfy RCRA requirements must also establish a standby trust fund.[1] Under the terms of the letter of credit, funds will be deposited by the issuing institution

---

[1] Even if a combination of financial assurance mechanisms is used, only one trust fund is necessary. If an owner or operator uses a trust fund together with a letter of credit, the trust fund may be used as the standby trust fund. If a letter of credit and a financial guarantee bond are both used, one standby trust fund is sufficient.

EXHIBIT V-2

LETTER OF CREDIT: REGULATORY AUTHORITIES FOR FINANCIAL INSTITUTIONS

	Type of Financial Institution	Primary Regulatory Authority	Whom to Call
1.	State-Chartered Financial Institutions: Commercial Banks, Savings and Loans, Mutual Savings Banks, Credit Unions. State-licensed Foreign Banks	State Authority	See Appendix B.
2.	Nationally-Chartered Commercial Banks. All Washington, D.C. Commercial Banks, Nationally-Licensed Foreign Banks	Comptroller of the Currency	Commercial Examinations Division (202) 447-1164
3.	Nationally-Chartered Savings and Loans	Federal Home Loan Bank Board	Regulatory Division Director, (202) 377-6000, ext. 6440
4.	Nationally-Chartered Mutual Savings Banks	Federal Home Loan Bank Board, State Authorities	As Number 3, and see Appendix B
5.	Nationally-Chartered Credit Unions	National Credit Union Administration	General Counsel, (202) 357-1030

directly into the standby trust fund in accordance with instructions from the Regional Administrator if the owner or operator fails to (1) maintain assurance or (2) perform closure or post-closure care. (See Section B.8 below for details.) The monies necessary to pay for closure and/or post-closure care will be disbursed from this trust fund. The trust fund is often initially established with a NOMINAL SUM and further payments are not required by EPA until it calls upon the letter of credit. A standby trust fund is not to be confused with an ordinary RCRA trust fund (described in Chapter III), although a standby trust is subject to the same requirements except that:

(a) annual payments into the standby trust fund are not required (only the nominal initial payment mentioned above is usually made);

(b) Schedule A of the trust agreement need not be updated;

(c) Annual valuations by the trustee are not required; and

(d) The trustee need not send notices of nonpayment.

The standby trust fund is not a financial assurance mechanism under RCRA, it merely facilitates drawing on letters of credit and surety bonds that are used as financial assurance. The standby trust fund must be worded exactly as required for trust funds. See Attachment III-3 and discussion in Section B.2 of Chapter III.

3. Obtaining a Letter of Credit. Qualified issuers include all commercial banks and some mutual savings banks, savings and loans, and credit unions (see Exhibit V-2 for more information on qualified issuers). The fee for the letter of credit may be negotiable, depending on the business history of the parties and particularly on the COLLATERAL required to secure the credit. Banks may provide letters of credit for certain owners or operators who otherwise would not qualify, if collateral is deposited with the bank. Collateral may be required up to a value of 100 percent (or more) of the letter of credit. The letter of credit mechanism allowed for RCRA financial assurance is different in two major respects from standard commercial versions; (1) the RCRA version can only be cancelled with 120 days notice before the current expiration date, and (2) the RCRA version must be extended automatically at least one year if it is not cancelled. Therefore, although many financial institutions will be qualified, it is not clear how many will be willing to provide a letter of credit for RCRA financial assurance.

As discussed above, an owner or operator will also need to arrange for a standby trust fund to accompany the RCRA letter of credit. Many institutions qualified to issue a RCRA letter of credit will also be qualified to establish the standby trust fund; however, not all financial institutions may be willing to provide both mechanisms.

4. Submission of Documents to EPA. Documents which must be submitted to the EPA Regional Administrator include:

- The letter of credit itself;
- An ORIGINALLY SIGNED DUPLICATE of the standby trust agreement.
- A separate letter stating the amount of credit applicable to each site covered by the letter of credit. This letter must include the letter of credit number, name of the issuer, date; EPA identification number, name, and address of each facility; and the amount of funds assured for closure and/or post-closure care of each facility.

These documents must be submitted by the effective date of the regulations.

SUBSEQUENT RESPONSIBILITIES OF THE OWNER OR OPERATOR

5. Updating Coverage. Within 60 days after an increase in the cost estimates because of inflation or changes in plans, the owner or operator is required to either (1) increase the amount of the letter if necessary to cover the estimated cost and submit evidence to the Regional Administrator of that increase or (2) obtain another form of financial assurance to cover the increase. The amount need not be increased once a facility has been closed.

If closure or post-closure cost estimates decrease, the owner or operator may reduce the amount of the letter of credit following written approval by the Regional Administrator. This includes decreases during the period of post-closure care. See Section E.1 of Chapter II for more details regarding documentation that should be provided with such requests.

6. Maintaining Assurance. The owner or operator is responsible for maintaining the letter of credit until closure or post-closure care has been completed. Thus, the owner or operator must substitute alternate financial assurance if the authority of the institution to issue letters of credit is revoked or suspended or in the event of bankruptcy of the issuing institution. For example, a bank's charter or license may be suspended or revoked, it could become bankrupt, or it could lose its authority to issue letters of credit. In such cases, the owner or operator must establish other financial assurance and submit evidence of this within 60 days after the issuer's disqualification.

In addition, assurance must be maintained until ownership of or operating responsibility for the facility changes, and the new owner or operator has met the applicable financial responsibility requirements.

Finally, the owner or operator may substitute an alternate mechanism of financial assurance so long as there is no lapse in coverage. See Section E.4 of Chapter II.

7. Cancellation or Nonrenewal of the Letter of Credit by the Issuer. If the issuer decides not to extend the letter of credit past the current expiration date, it must notify both the owner or operator and the Regional Administrator by certified mail at least 120 days before the current expiration date. The 120 days will begin on the date when both the owner or operator and the Regional Administrator have received the notice, as evidenced by the return receipts. The owner or operator has 90 days in which to arrange for new financial assurance. After 90 days, the Regional Administrator will draw on the letter of credit unless alternate assurance is obtained and approved or the issuer grants an extension of the term of credit. If an extension is granted, the Regional Administrator will draw on the letter of credit during the last 30 days of such an extension if the owner or operator fails to provide alternate financial assurance and obtain written approval.

8. Drawing on Funds for Closure or Post-Closure. The owner or operator is not authorized to draw on the RCRA letter of credit, only the Regional Administrator may do this. The owner or operator is legally obligated to repay any amounts drawn under the letter of credit with interest as agreed, however. The owner or operator is free to negotiate a separate letter of credit to finance its own closure or post-closure expenses. If the owner or operator fulfills its closure and post-closure obligations, the Regional Administrator will not draw on the letter of credit.

9. Termination of Letter of Credit. The owner or operator should request the approval of the Regional Administrator to terminate the letter of credit in two situations: (1) when alternate financial assurance has been substituted (see Section E.4 of Chapter II) and (2) when released from applicable RCRA financial requirements (see Section G of Chapter II). Upon receiving the Regional Administrator's written consent, the owner or operator should forward a copy of it to the institution issuing the letter of credit. The letter of credit can only be terminated with the written consent of the Regional Administrator.

At the same time, the owner or operator should request the Regional Administrator to approve the termination of the standby trust fund unless the owner or operator is maintaining assurance with a financial guarantee bond. Procedures for terminating the standby trust fund are identical to the procedures for terminating trust funds, discussed in Section B.9 of Chapter III.

PERMITTED FACILITY REQUIREMENTS

The only additional permitted facility requirements are that the letter of credit must be effective before hazardous wastes are first received at a new facility and the letter of credit must be submitted to the Regional Administrator at least 60 days before the first receipt of such wastes.

C. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the responsibilities of the Regional Office for reviewing letters of credit used to establish financial assurance. A summary checklist appears in Attachment V-2 at the end of this chapter.

REVIEWING INITIAL SUBMISSIONS

1. Qualifications of Issuers. Financial institutions must have authority to issue letters of credit and their letter of credit operations must be regulated by a Federal or State agency. Regional Office personnel should check the issuer's qualification with the appropriate regulatory authorities on a case by case basis. For a list of the proper regulatory authorities to contact, see Exhibit V-2 and Appendix B.

The qualifications of the trustee institution for the standby trust fund must also be verified. The qualifications required are the same as for the RCRA trust fund. See Section C.1 of Chapter III for procedures.

2. Conformity to Other Requirements. When a letter of credit arrives at the EPA Regional Office, Regional Office personnel must verify that the letter of credit is

- effective by the effective date of the regulations;
- worded exactly as in the regulations (see Attachment V-3) in force on the date of signature;
- signed by an authorized officer of the financial institution;
- in an amount at least equal to the current cost estimate(s);
- accompanied by a letter referring to the letter of credit by number, issuing institution, and date which provides the EPA Identification Number, name, and address of each facility, and the amount of funds assured by the letter of credit for closure and post-closure care of each facility; and
- accompanied by an originally signed duplicate of the standby trust agreement worded exactly as required (see Attachment III-3).

3. Recordkeeping and Tracking Systems. As letters of credit and standby trust agreements are received, relevant information should be recorded, including the name, address, and EPA Identification Number of the facility; letter of credit number and financial institution name; amount of coverage for each facility and effective date; and information verification procedures performed. Automatic data processing systems can be used for this. A list of letters of credit and standby trust funds in effect should be kept not only under the owner or operator's name, but also under each financial institution's name so that in the case of bankruptcy, de-licensing, or other reasons, it is easy to determine which owners or operators need to obtain financial assurance elsewhere. This system could be used to keep track of mergers and changes in the names of financial institutions.

SUBSEQUENT RESPONSIBILITIES

4. Updating Coverage. The Regional Office should ensure that if closure or post-closure cost estimates increase, the owner or operator obtains additional financial assurance, either by increasing the amount of the letter of credit or adding a new mechanism for financial responsibility within 60 days after the increase.

If cost estimates decrease, the owner or operator may apply for a reduction in the letter of credit. The Regional Administrator should approve the decrease in writing only if the owner or operator has demonstrated that sufficient financial responsibility will remain to cover closure and/or post-closure expenses. Such a determination will require a review of the closure or post-closure plan for technical adequacy and completeness as well as a review of the reasonableness of the associated cost estimates. See Section E of Chapter II for a more detailed discussion.

5. Maintaining Assurance. The Regional Administrator must verify that the owner or operator provides new financial assurance when the issuer ceases to qualify under the regulations. Note that the issuing institution is not required by RCRA regulations to notify the Regional Administrator or the owner or operator regarding such an eventuality. Regional Offices are not expected to develop surveillance systems to monitor for such events but should be prepared to instruct owners or operators to obtain alternate assurance in the event the disqualification, bankruptcy, or termination of the issuer becomes known. The HWDMS may prove useful for this, as discussed in Section I of Chapter II.

In addition, Regional Office staff may want to periodically review the qualifications of issuers to ensure that no owner or operator is using an insurance policy from an unqualified insurer. The staff should check the possibility of changes in names of financial institutions so that genuinely qualified issuers are not disqualified; this may involve no more than a telephone call to the proper regulatory authority or the financial institution itself.

If the ownership of or operating responsibility for a facility has been transferred, the Regional Administrator must not allow the letter of credit for that facility to be terminated until the new owner or operator has met the applicable financial responsibility requirements.

The Regional Administrator should approve requests to use alternate assurance mechanisms when no lapse or coverage will result.

6. Nonrenewal by Issuer. The Regional Administrator must ensure that (1) the owner or operator obtains alternate financial assurance and (2) obtains written approval of such alternate assurance, within 90 days after receipt of a notice from the issuing institution that it has decided not to extend the letter of credit beyond its current expiration date. The 90-day period begins after receipt by both the owner or operator and the Regional Administrator of the notice; upon receiving such a notice the Regional Office should contact the owner or operator to determine exactly when the 90-day period commences. Nonrenewal will only be allowed if the owner or operator provides other financial assurance.

Upon receipt of a notice from the issuer, Regional Office staff should contact the owner or operator to determine (1) the date it received the notice and (2) its plans to provide alternate assurance. Both pieces of information will be essential for determining the nature and timing of future agency action.

7. Drawing on Funds for Closure or Post-Closure. The Regional Administrator is authorized to draw funds for closure and/or post-closure:

(1) the owner or operator fails to provide alternate assurance within 90 days after receipt of a notice from the issuing institution that it has decided not to extend the letter of credit beyond its expiration date, or

(2) following a determination pursuant to §3008 of RCRA that the owner or operator has failed to perform closure or post-closure care in accordance with previously approved plans whenever required to do so.

In the first case, the Regional Administrator may delay the drawing if the issuer grants an extension of the term of the credit. However, the Regional Administrator must draw on the letter during the last 30 days of any extension if the owner or operator fails to provide alternate assurance and obtain the written approval of the Regional Administrator.

Funds drawn from the letter of credit must be deposited into the standby trust fund. The Regional Administrator should instruct the issuing institution in writing to deposit the funds. If possible, the Regional Office should notify the trustee of the standby trust in advance of expected payments into the trust.

Requests from parties other than the owner or operator for reimbursement from the trust should be handled as described in Section C.8 of Chapter III.

8. Requests to Terminate the Letter of Credit. The Regional Administrator may consent to the termination of the letter of credit only (1) if alternate assurance is substituted (see Section E.4 of Chapter II) or (2) if the owner or operator is released from applicable RCRA financial requirements. (See Section G of Chapter II.) Consent must be in writing and may accompany the Regional Administrator's letter releasing the owner or operator from closure or post-closure financial assurance requirements. The Regional Administrator should return the letter of credit to the issuing institution for termination.

At the same time, the Regional Administrator may consent to the termination of the standby trust fund unless the owner or operator is maintaining assurance with a financial guarantee bond. Procedures for terminating the standby trust fund are identical to the procedures for terminating trust funds, discussed in Section B.9 of Chapter III.

PERMITTED FACILITY REQUIREMENTS

The only differences for permitted facilities are that the letter of credit must be effective before hazardous wastes are first received at a new facility, and the letter of credit must be submitted to the Regional Administrator at least 60 days before the first receipt of those wastes.

D. SOURCES OF FURTHER INFORMATION

Further information on letters of credit may be found by contacting the appropriate state or federal regulatory agency, or by consulting Article 5 of the Uniform Commercial Code or the International Chamber of Commerce, "Uniform Customs and Practices for Documentary Credits."

Federal regulatory agencies are listed in Appendix A-2.

National trade associations can supply information about letters of credit and financial institutions in general. Major national organizations include:

1. American Bankers Association
   1120 Connecticut Avenue, N.W.
   Washington, D.C. 20036
   (202) 467-4000
   Trade association of banks and trust companies.

2. Independent Bankers Association of America
P.O. Box 267
Sauk Centre, Minnesota 56378
(612) 352-6546
Association of medium size and smaller independent banks.

3. National Association of Mutual Savings Banks
200 Park Avenue
New York, New York 10017
(212) 973-5432
Trade association of mutual savings banks.

4. United States League of Savings Associations
111 East Wacker Drive
Chicago, Illinois 60601
(312) 644-3100
Trade association of savings and loan associations, cooperative banks, and state and local savings and loan association leagues.

5. Credit Union National Association
5710 Mineral Point Road
Box 431
Madison, Wisconsin 53701
(608) 231-4000
Trade association of state credit union leagues.

6. Conference of State Bank Supervisors
1015 Eighteenth Street, N.W., Suite 606
Washington, D.C. 20036
(202) 296-2840
Organization of state officials responsible for the supervision of state-chartered banking institutions.

7. National Association of State Credit Union Supervisors
1499 Chain Bridge Road, Suite 201
McClean, Virginia 22101
(703) 821-2243
Organization of state credit union supervisors and state-chartered credit unions.

8. National Association of State Savings and Loan Supervisors
1001 Connecticut Avenue, N.W., Suite 800
Washington, D.C. 20036
(202) 452-1523
Organization of state savings and loan supervisors.

ATTACHMENT V-1

RCRA LETTER OF CREDIT CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(1) ___ Verify that the issuer is authorized to issue letters of credit, and its letter of credit operations are regulated by a state or federal agency.

" ___ Verify that the trustee institution for the standby trust fund has the authority to act as a trustee and is regulated and examined by a federal or state agency.

(2) ___ Check that:

  ___ The letter of credit is irrevocable for at least 1 year and provides for automatic extensions of at least one year.

  ___ The letter of credit is in force by the effective date of the regulations (interim status) or before the first receipt of hazardous waste (new permitted facilities).

  ___ The wording of the letter of credit is identical to the regulations (see Attachment V-3).

  ___ The amount of coverage is at least equal to the current cost estimate.

" ___ Establish a standby trust fund worded exactly as required by the regulations (see Attachment III-3) and acknowledged in accordance with state requirements.

(4) ___ Submit the letter of credit to the EPA Regional Administrator.

" ___ Submit an originally signed duplicate of the standby trust agreement.

" ___ Submit a separate letter identifying the facilities and the amount of coverage for each facility provided under the letter of credit.

---

* Numbers correspond to paragraphs in Section B.

ATTACHMENT V-1 (continued)

RCRA LETTER OF CREDIT CHECKLIST FOR OWNERS OR OPERATORS

Paragraph
Number *

(5) ___ Submit evidence of increases in coverage within 60 days after any increase in cost estimates.

(6) ___ If issuer becomes disqualified, establish new assurance within 60 days.

(7) ___ If issuer sends notice of nonrenewal of the letter of credit, owner or operator has 90 days to obtain alternate assurance and approval of Regional Administrator.

" ___ If issuer grants an extension, arrange for alternate assurance prior to the last 30 days of the extension period.

(8) ___ To avoid having funds drawn from the letter of credit, fulfill closure or post-closure obligations or provide alternate assurance after receipt of a notice of nonrenewal.

(9) ___ Request approval to terminate the letter of credit (1) when alternate assurance is substituted, and (2) when released from closure or post-closure financial assurance requirements by the Regional Administrator.

    ___ Request approval to terminate the standby trust fund unless assurance is being provided through a financial guarantee bond.

---

* Numbers correspond to paragraphs in Section B.

ATTACHMENT V-2

RCRA LETTER OF CREDIT CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator should ensure that:

Paragraph Number *

(1) ___ The issuing institution is qualified.

" ___ The trustee financial institution is qualified.

(2) ___ The letter of credit is:

- ___ Effective by the appropriate dates.
- ___ Worded exactly as in the regulations.
- ___ Signed by an authorized officer of the financial institution.
- ___ Accompanied by a separate letter detailing the coverage for each facility.
- ___ Accompanied by an originally signed duplicate of the standby trust agreement.

(3) ___ Relevant information is recorded.

(4) ___ Evidence is submitted within 60 days that the amount of the letter of credit is properly increased if necessary to cover increases in cost estimates.

" ___ Decreases in the amount of the credit are approved only when sufficient coverage will remain.

(5) ___ Owners or operators obtain alternate assurance within 60 days if the issuing institution ceases to qualify, ceases operations, or files for bankruptcy.

(6) ___ The owner or operator is contacted after receipt of notice of intent to cancel or nonrenew.

---

* Numbers correspond to paragraphs in Section C.

ATTACHMENT V-2 (continued)

RCRA LETTER OF CREDIT CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *

" ___ Alternate financial assurance is obtained within 90 days after notification of nonrenewal by the issuer.

(7) ___ Letters of credit are drawn upon when:

  ___ Owner or operator has not obtained alternate financial assurance within 90 days after notice of cancellation by issuing institution or prior to the last 30 days of any extension granted by the issuer, or

  ___ Following a determination pursuant to §3008 of RCRA that the owner or operator had failed to perform closure and/or post-closure care as required.

" ___ Funds drawn from the letter of credit are deposited by the issuer into the standby trust fund.

" ___ The trustee of the standby trust fund is notified, if possible, in advance of payments into the trust.

" ___ Closure and/or post-closure care expenses of parties other than the owner or operator are reimbursed within 60 days after requests are received, but only when itemized bills are submitted and the expenses are in accordance with closure and/or post-closure plans, or otherwise justifiable.

" ___ If the closure costs will significantly exceed the value of the closure standby trust fund, complete reimbursement is withheld until closure is completed.

(8) ___ Requests to terminate the letter of credit are approved in writing when (1) alternate assurance is provided or (2) the owner or operator has been released from closure or post-closure financial requirements.

  ___ Requests to terminate the standby trust fund are approved in writing unless assurance is being provided through a financial guarantee bond.

---

* Numbers correspond to paragraphs in Section C.

ATTACHMENT V-3

REQUIRED WORDING FOR RCRA IRREVOCABLE OF CREDIT
40 CFR 264.151(d)

Regional Administrator(s)

Region(s) ______________

U.S. Environmental Protection Agency

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ________ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $________, available upon presentation [insert, if more than one Regional Administrator is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit No. ________, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Resource Conservation and Recovery Act of 1976 as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(d) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

VI. ESTABLISHING FINANCIAL RESPONSIBILITY USING INSURANCE

A. INTRODUCTION

Owners or operators may satisfy the RCRA financial responsibility requirements by obtaining INSURANCE in which an insurance company promises payment of closure or post-closure costs on behalf of the owner or operator.* Such payment must be provided whenever necessary; total payments up to the FACE AMOUNT of the policy must be made to the party or parties in the amounts specified by the Regional Administrator. A CERTIFICATE OF INSURANCE is a separate document used as evidence that an insurance contract has been arranged. Depending on the treatment of PREMIUM PAYMENTS for tax purposes, insurance contracts may be a desirable means of complying with the RCRA financial requirements for some firms. EPA has requested clarification of the tax treatment from the Internal Revenue Service; owners or operators may want to request private rulings on this matter from the Internal Revenue Service under Revenue Procedure 80-20. Companies may also wish to purchase insurance because then the closure and post-closure costs need not appear as liabilities on their financial statements. Finally, there is no defined PAY-IN PERIOD for premium payments, as is the case with TRUST FUNDS.

The regulations pertaining to RCRA insurance are as follows:

EXHIBIT VI-1

RCRA INSURANCE REGULATIONS

Topic	Interim Status	Permitted Facilities
Closure Insurance	40 CFR §265.143(d)	40 CFR §264.143(e)
Post-Closure Insurance	40 CFR §265.143(d)	40 CFR §264.143(e)
Certificate of Insurance Wording	40 CFR §264.151(e)	40 CFR §264.151(e)

Source: Title 40, *Code of Federal Regulations* (CFR).

---

* Closure or post-closure insurance is different from liability insurance which is discussed in a separate guidance manual.

B. RCRA INSURANCE REQUIREMENTS

This section describes both the requirements for using RCRA insurance and the responsibilities of owners or operators using insurance to demonstrate financial assurance. A checklist of these responsibilities appears in Attachment VI-1 at the end of this chapter.

INITIAL RESPONSIBILITIES OF THE OWNER OR OPERATOR

1. Qualifications of Insurer. At a minimum, the insurance company must be LICENSED to transact business as an insurer in one or more states, or eligible to provide SURPLUS OR EXCESS LINES INSURANCE in one or more states. The license or eligibility need not be in the state in which the facility is located. If there is any question about the qualifications of an insurer, the owner or operator should contact the insurer about its licenses and then confirm with the regulatory authorities of the appropriate state or states. (See Appendix B)

2. Form and Amount of Assurance. To comply with RCRA regulations, closure or post-closure insurance policies must

- provide that funds will be available to close the facility whenever final closure occurs or provide funds for post-closure care whenever the post-closure period begins

- provide that the insurer will be responsible for paying out funds, up to the face amount of the policy, upon the direction of the Regional Administrator, to such party or parties as the Regional Administrator specifies

- be issued with a face amount at least equal to the current cost estimate for closure or post-closure, unless a combination of mechanisms is being used

- provide an option for automatic renewal at the face amount of the expiring policy

- provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium

- contain a provision allowing ASSIGNMENT of the policy to a successor owner or operator

With respect to the assignment provision, the policy may specify that assignment is conditional upon the consent of the insurer so long as the policy also states that such consent will not be "unreasonably refused." This is standard legal language in many contracts. Right of assignment enables an owner or operator to redeem value from the policy if ownership or operation of the facility covered is transferred to a new party. The insurer may want the right to consent to or refuse assignment in order to protect itself against transfers of ownership or operation that would unfairly prejudice the interests of the insurer in a manner not contemplated originally (e.g., transfer of the facility to an insolvent owner). Refusal to consent to assignment would be "unreasonable" where the interests of the insurer are not prejudiced by a successor owner or operator "stepping into the shoes" of the original insured party.

The face amount of the insurance policy must, at a minimum, equal the CURRENT COST ESTIMATES for closure and/or post closure care. Of course, if insurance is combined with another mechanism (see Section B of Chapter II), the combined coverage must at least equal the cost estimate. The initial amount of coverage may be larger than the cost estimate in order to accommodate expected revisions in the estimate due to inflation.

The owner or operator who uses closure or post-closure insurance to assure financial responsibility is not required to set up a STANDBY TRUST FUND.

3. Obtaining an Insurance Contract. Initially, few insurance companies may offer RCRA closure and/or post-closure contracts of insurance. Owners or operators interested in this option are advised to contact Regional Office staff about what companies are known to offer this financial assurance mechanism. These companies are likely to ask for detailed information on the facility and the owner or operator applying for the insurance contract. This information may include any of the financial and operating data listed in Chapter II, Section C. Insurers may insist on an on-site scientific/engineering assessment in addition to a review of recent financial statements. Some insurers may ask that EPA first review and approve closure and post-closure plans for interim status facilities. The Regional Office might consider providing such a review, especially of closure plans for storage facilities. Because land disposal permit standards are not yet finalized, such reviews for disposal facilities are not feasible at present.

4. Submission of Documents to EPA. The owner or operator must submit to the Regional Administrator by the effective date of the regulations either a certificate of insurance or a letter from an insurer stating that the insurer is considering issuance of insurance to the owner or operator which conforms to RCRA requirements. Within 90 days after submission of such a letter, a certificate of insurance must be submitted to the Regional Administrator or evidence that other financial assurance has been established. The wording of the certificate must be identical to that required by the regulations in force at the time of submission (see Attachment VI-3 for current wording). The policy itself need not be submitted at that time. However, the insurer must submit a duplicate original of the policy, including all endorsements, whenever requested by the Regional Administrator.

SUBSEQUENT RESPONSIBILITIES OF THE OWNER OR OPERATOR

5. Updating Coverage. Whenever the cost estimate increases during the operating life of the facility, the owner or operator must arrange for assurance of payment of the extra cost and submit evidence of that increase (e.g., a new certificate) within 60 days.

Whenever the current closure or post-closure cost estimates decrease during the operating life of the facility, the face amount may be reduced accordingly following written approval by the Regional Administrator. This is further described in Section E.1 of Chapter II.

The post-closure insurance policy, like closure insurance, is paid up by the time of closure. However, during the post-closure period, the face amount of the post-closure policy will increase annually, on the anniverary of the date that liability to make payments accrues, to reflect earnings of the funds remaining under the policy. The increase must be equal to the face amount, less any payments by the insurer for post-closure expenses, multiplied by an amount equivalent to 85 percent of the most recent investment rate or the equivalent coupon-issue yield announced by the U.S. Treasury for 26 week Treasury securities. Reductions in the face amount of post-closure insurance during the post-closure period are not authorized by the regulations even if the face amount exceeds the post-closure cost estimate.

6. Maintaining Coverage. The owner or operator must maintain the insurance policy in full force and effect by making required PREMIUM PAYMENTS. Failure to pay the premium will constitute a significant violation of RCRA Subpart H regulations, warranting such remedy as the Regional Administrator deems necessary. Such violation will be deemed to begin upon receipt by the Regional Administrator of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium.

The owner or operator is also responsible for maintaining coverage in certain circumstances that are discussed fully in Chapter 2, Section E.2, including bankruptcy or ineligibility of the insurer.

If the owner or operator sells or transfers operating responsibility for the facility covered by RCRA insurance, the policy may be assigned to the new owner or operator to maintain assurance.

Finally, the owner or operator may substitute an alternate mechanism of financial assurance so long as there is no lapse in coverage. See Section E.4 of Chapter II.

7. Cancellation of the Insurance Policy by the Issuer. The insurer may cancel, terminate, or fail to renew the policy only if the premium is not paid. If that occurs, the insurer must provide notice to both the owner or operator and the Regional Administrator by certified mail. Cancellation, termination, or failure to renew may not occur, however, during the 120 days

beginning with the date of receipt of the notice by both the Regional Administrator and the owner or operator, as evidenced by the return receipts. See Section E.3 of Chapter II.

Cancellation, termination, or failure to renew may not occur -- and the policy will remain in full force and effect -- in the event that on or before the date of expiration:

- The Regional Administrator deems the facility to be abandoned;

- The Regional Administrator terminates or revokes interim status or revokes the permit;

- Closure is ordered by the Regional Administrator, a U.S. district court, or other court of competent jurisdiction;

- The owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 of the U.S. Code; or

- The premium due is paid.

8. Drawing on Funds for Closure or Post-Closure. As closure or post-closure activities are conducted by the owner or operator, itemized bills should be submitted to the Regional Administrator with requests for reimbursement. Within 60 days after receiving the bills, the Regional Administrator will determine if the expenditures are justified, and instruct the insurer to make the reimbursement. Actual reimbursement payments by the insurer do not reduce the face amount of the policy, although they do reduce the future liability of the insurer by the amount of the payment.

The Regional Administrator may withhold authorization of a portion of reimbursement payments for closure if there is reason to believe that the cost of closure will be significantly greater than the face amount of the policy. He may continue to withhold reimbursement until receipt of satisfactory certification of proper closure. The purpose of this action is to assure the extension of financial assurance until closure is completed.

Of course, the owner or operator remains responsible for all closure or post-closure costs even if the funds available through insurance are exhausted.

9. Termination of the Policy by the Owner or Operator. The owner or operator should request the approval of the Regional Administrator to terminate the policy in two situations: (1) when alternative financial assurance has been substituted (see Section E.4 of Chapter II) and (2) when released from applicable RCRA requirements (see Section G of Chapter II). Upon receiving the Regional Administrator's written consent, the owner or

operator should forward a copy of it to its insurer along with a request that the policy be terminated. Depending on the terms of the policy, the owner or operator may be entitled to any funds up to the face amount which have not been expended on closure or post-closure care. Insurance coverage can only be terminated with the written consent of the Regional Administrator.

PERMITTED FACILITIES

For new facilities, the insurance policy for closure or post-closure care must be effective before the initial receipt of hazardous waste and the certificate of insurance submitted to EPA 60 days before the initial receipt of waste.

C. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the duties of the Regional Office in reviewing insurance policies for RCRA financial assurance and ensuring satisfaction of requirements. A summary checklist appears in Attachment VI-2 at the end of this chapter.

REVIEWING INITIAL SUBMISSIONS

1. Qualifications of Insurer. Issuing institutions must be licensed to transact the business of insurance or eligible to provide EXCESS OR SURPLUS LINES INSURANCE in any of one or more states. EPA Regional Office personnel should contact the insurer and appropriate state regulatory agencies, such as insurance commissioners, to verify qualifications. See Appendix B. The insurer need not be qualified in the state in which the covered facility is located.

2. Conformity to Other Requirements. Owners or operators interested in using closure or post-closure insurance may submit by the effective date a letter from an insurer stating that the insurer is considering issuance of insurance to the owner or operator. The letter should state that the insurance -- if issued -- will conform to RCRA requirements. For such submittals, it is essential to verify that an insurance certificate is provided within 90 days after the effective date or that alternate assurance is established.

When an owner or operator submits a certificate of insurance to the EPA Regional Office, the Regional Administrator must verify that:

- The wording of the certificate is exactly as required by the regulations (see Attachment VI-3);

- The certificate indicates that the policy is effective by (1) the effective date of the regulations (interim status) (2) 90 days after the effective date if a letter from an insurer was submitted by the effective date (interim status only), or (3) the first receipt of hazardous waste (new permitted facilities).

- The certificate indicates that the face amount is adequate.

3. Recordkeeping and Tracking Systems. As certificates of insurance are received, relevant information should be recorded, including the name, address, and EPA identification number of the facility; insurance policy number and insurer name; amount of coverage for each facility and effective date; and information verification procedures performed. Similarly, if an owner or operator submits a letter from a potential insurer, the name, address, and EPA identification number of the facility should be logged and provision made to track whether financial assurance is established within 90 days after the effective date. Automatic data processing systems can be used for this. A list of insurance contracts in effect should be kept not only under the owner or operator's name, but also under each insurer's name so that in the case of bankruptcy, de-licensing, or other reasons, it will be easy to determine which owners or operators need to obtain financial assurance elsewhere. This system could also be used to keep track of mergers and changes in the names of insurers.

SUBSEQUENT RESPONSIBILITIES

4. Updating Coverage. As cost estimates for closure and post-closure are adjusted for inflation or recomputed due to changes in plans, the Regional Administrator will need to (1) ensure that the face amount of every insurance contract is properly increased within 60 days of the increase in the cost estimates and (2) respond to requests for reduction in coverage if the cost estimates decrease.

The Regional Administrator will need to check that increases in cost estimates are covered by increases in the face amount of insurance contracts or by other added financial assurance and that owners and operators have informed the Regional Office of such changes. See the discussion in Chapter II, Section E.1.

The Regional Administrator should review requests for decreases in coverage individually and should deny those requests unless the Regional Administrator is convinced that sufficient coverage will remain. Such a determination will require a review of the closure or post-closure plan for technical adequacy and completeness as well as as review of the reasonableness of the associated cost estimates. See the discussion in Chapter II, Section E.1. No decreases in assurance for post-closure care should be allowed following closure.

5. Maintaining Assurance. The Regional Administrator must ensure that alternate financial assurance is provided by the owner or operator if the insurance company becomes disqualified, ceases operations, or files for

bankruptcy. Note that the insurer is not required to notify the Regional Administrator or the owner or operator regarding such an eventuality. Regional Offices are not expected to develop surveillance systems to monitor for such events but should be prepared to instruct owners or operators to obtain alternate assurance in the event of disqualification, bankruptcy, or termination of the insurer. The HWDMS may prove useful for this, as discussed in Section I of Chapter II.

In addition, Regional Office staff may want to periodically review the qualifications of insurers to ensure that no owner or operator is using an insurance policy from an unqualified insurer. To avoid duplication of effort, Regional Offices should contact EPA Headquarters before undertaking such activities.

In the event of transfer of ownership or operations of a facility, the Regional Administrator should verify that the insurance policy has been assigned to the new owner or operator or that alternate assurance has been provided.

The Regional Administrator should approve requests to use alternate assurance mechanisms if no lapse in coverage will result.

6. Cancellation of Insurance Contracts by the Insurer. The insurer may cancel, terminate, or fail to renew the policy only if the premium is not paid. If that occurs, the insurer must provide notice of its intent to cancel to both the owner or operator and the Regional Administrator by certified mail. Cancellation, termination, or failure to review may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the owner or operator and the Regional Administrator, as evidenced by the return receipts. The insurer may not cancel a policy if by the expiration date:

- The Regional Administrator deems the facility to be abandoned;
- The Regional Administrator terminates interim status or the RCRA permit;
- Closure is ordered by the Regional Administrator, a U.S. district court, or other court of competent jurisdiction;
- The owner or operator is named as a debtor in bankruptcy proceedings; or
- The premium is paid.

Upon receipt of a notice from an insurer, the Regional Administrator should contact the owner or operator to determine (1) if it is willing and able to pay the premium and (2) the date it received the notice from the insurer. Both pieces of information will be essential for determining the nature and timing of further agency action.

7. Drawing on Funds for Closure and Post-Closure. Insurance contracts are designed to assure that funds will be available at any time to pay for closure and post-closure care. As closure or post-closure activities are conducted by the owner, operator, or other person authorized by the Regional Administrator, itemized bills will be submitted to the Regional Administrator with requests for reimbursement. Within 60 days after receipt of such requests, the Regional Administrator must determine if the expenditures are justified, and instruct the insurer in writing to make the reimbursement. This is discussed in Section F of Chapter II.

The Regional Administrator may withhold authorization of a portion of reimbursement payments for closure if there is reason to believe that the cost of closure will be significantly greater than the face amount of the policy. The Regional Administrator may continue to withhold reimbursement until certification of proper closure is submitted. The purpose of this action is to assure the extension of financial assurance until closure is completed. See Section F of Chapter II.

8. Requests to Terminate Insurance Coverage. The Regional Administrator may consent to the termination of insurance coverage only (1) if alternate assurance is substituted (see Section E.4 of Chapter II) or (2) if the owner or operator is released from applicable RCRA financial requirements. Consent must be in writing and may accompany the Regional Administrator's letter releasing the owner or operator from closure or post-closure financial assurance requirements.

REQUIREMENTS FOR PERMITTED FACILITIES

For new facilities, the insurance policy for closure or post-closure care must be effective before the initial receipt of hazardous waste, and the certificate of insurance submitted to EPA at least 60 days before the initial receipt of waste.

D. SOURCES OF FURTHER INFORMATION

State agencies listed in Appendix B can advise whether an insurer is licensed or eligible to provide insurance. In addition, national trade associations can supply general information about the insurance industry. Major national organizations include the following:

1. American Insurance Association
   85 John Street
   New York, New York 10038
   (212) 669-0400
   Trade and service organization of the property and casualty insurance industry.

2. Insurance Information Institute
   110 William Street
   New York, New York 10038
   (212) 669-9200
   Educational, fact-finding, and communications organization for all lines of insurance except life and health insurance.

3. Independent Insurance Agents of America
   100 Church Street
   New York, New York 10007
   (212) 285-4250
   Trade association of independent insurance agents.

4. Professional Insurance Agents
   400 North Washington Street
   Alexandria, Virginia 22314
   (703) 836-9340
   Trade association of insurance agents.

5. National Association of Insurance Commissioners
   350 Bishops Way
   Brookfield, Wisconsin 53005
   (414) 784-9540
   Organization of state insurance commissioners.

6. Alliance of American Insurers
   20 North Wacker Drive
   Chicago, Illinois 60606
   (312) 558-3700
   Trade association of fire and casualty insurance companies.

7. National Association of Insurance Brokers
   311 First Street, N.W.
   Suite 700
   Washington, D.C. 20001
   (202) 783-8880
   Trade association of commercial insurance brokers.

8. National Association of Independent Insurers
   2600 River Road
   Des Plaines, Illinois 60018
   (312) 297-7800
   Trade association of fire, casualty, and surety insurers.

9. National Insurance Consumer Organization
   344 Commerce Street
   Alexandria, Virginia 22314
   (703) 549-8050
   Non-profit public interest membership organization.

ATTACHMENT VI-1

RCRA INSURANCE CONTRACT CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(1) ___ Verify that the insurer is licensed to transact the business of insurance or eligible as an excess or surplus lines insurer in at least one state.

(2) ___ Check that:

- ___ the policy assures that funds will be available whenever needed,
- ___ the insurer agrees to pay out funds at the direction of the Regional Administrator,
- ___ the policy face amount is equal to the cost estimate,
- ___ the policy provides for an automatic renewal option at the face amount of the expiring policy,
- ___ assignment to a successor owner or operator is permitted, and
- ___ the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium, and must give 120 days notice to both the owner or operator and the Regional Administrator.

(4) ___ Submit a certificate of insurance to EPA worded exactly as specified (See Attachment VI-3) by effective date of regulations for interim status facilities or 60 days before the initial receipt of hazardous wastes for new facilities.

" ___ Interim status facilities may instead submit a letter from an insurer stating that it is considering issuance of insurance to the owner or operator; the certificate of insurance or evidence of alternate assurance must be submitted within 90 days after the effective date.

---

*Numbers correspond to paragraphs in Section B.

ATTACHMENT VI-1 (continued)

RCRA INSURANCE CONTRACT CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(5) ___ Submit evidence of increases in face amount of policy within 60 days after any increase in cost estimates, due to annual adjustments for inflation or changes in plans, during the operating life of the facility.

(6) ___ Pay premiums as due.

" ___ Arrange for alternate assurance in the event of bankruptcy or ineligibility of insurer within 60 days.

(7) ___ If insurer gives notice to owner or operator of cancellation or non-renewal, arrange for alternate assurance or pay premium.

(8) ___ Present itemized bills and requests for reimbursement for closure or post-closure expenses to Regional Administrator, who must respond within 60 days.

(9) ___ Request approval to terminate the insurance policy (1) when alternate assurance is substituted, and (2) when released from closure or post-closure financial assurance requirements by the Regional Administrator.

---

*Numbers correspond to paragraphs in Section B.

ATTACHMENT VI-2

RCRA INSURANCE CONTRACT CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator must ensure that:

Paragraph Number *

(1) ___ The insurer is licensed to transact the business of insurance or eligible as a provider of excess or surplus lines insurance in any of one or more states.

(2) ___ The certificate of insurance:

- ___ is worded exactly as in the regulations (see Attachment VI-3);
- ___ has an adequate face amount;
- ___ is received by EPA and effective by effective date of regulations (interim status) or 60 days before the first receipt of hazardous waste (general status); or

" ___ The owner or operator of an interim status facility (1) submits by the effective date a letter from an insurer stating that it is considering issuance of a policy and (2) submits the certificate of insurance or evidence of alternate assurance within 90 days.

(3) ___ Relevant information is recorded.

(4) ___ Evidence of increases in face amount of insurance is provided within 60 days if necessary to cover increases in cost estimates.

" ___ Decreases in face amount of insurance are approved only during the operating life of the facility and only when sufficient coverage will remain.

" ___ Face amount increases during post-closure period in accordance with 85% rule.

---

* Numbers correspond to paragraphs in Section C.

ATTACHMENT VI-2 (continued)

RCRA INSURANCE CONTRACT CHECKLIST FOR REGIONAL OFFICES

Paragraph Number

(5) ___ Alternate financial assurance is provided within 60 days if insurance company becomes disqualified, ceases operations, or files for bankruptcy.

" ___ Insurance policies are assigned or other financial assurance is provided in the event of transfer of ownership or operation.

(6) ___ The owner or operator is contacted following notice from insurer of intent to cancel insurance.

(7) ___ Within 60 days after receiving bills, requests for reimbursement of closure are approved in a manner that assures the availability of funds until closure is completed. This may require verification of closure cost estimates and plans, and denial of a portion of the reimbursement request.

" ___ Requests for reimbursement of post-closure expenses are approved within 60 days after receiving bills if in accordance with plan or otherwise justifiable.

" ___ The insurer is instructed in writing to make reimbursement in the specified amounts

(8) ___ Requests to terminate insurance are approved in writing when (1) alternate financial assurance is substituted or (2) the owner or operator has been released from closure or post-closure financial requirements.

---

* Numbers correspond to paragraphs in Section C.

ATTACHMENT VI-3

REQUIRED WORDING FOR RCRA INSURANCE CERTIFICATE
40 CFR 264.151(e)

Name and Address of Insurer
(herein called the "Insurer"): ______________________________

Name and Address of Insured
(herein called the "Insured"): ______________________________

Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount: ____________________

Policy Number: ____________________

Effective Date: ____________________

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 264.143(e), 264.145(e), 265.143(d), and 265.145(d), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the EPA Regional Administrator(s) of the U.S. Environmental Protection Agency, the Insurer agrees to furnish to the EPA Regional Administrator(s) a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 40 CFR 264.151(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: ______________________________

[Date]

VII. ESTABLISHING FINANCIAL RESPONSIBILITY USING THE FINANCIAL TEST OR CORPORATE GUARANTEE

A. INTRODUCTION

The RCRA financial assurance requirements may be satisfied by a test of financial soundness. Rather than arranging for a third party to guarantee payment of closure or post-closure costs, the owner or operator may demonstrate his future ability to meet costs by passing one of two FINANCIAL TESTS. Alternatively, the owner or operator may satisfy the financial assurance requirements by the CORPORATE GUARANTEE, whereby the owner or operator's PARENT CORPORATION passes one of the same two financial tests and agrees to guarantee the performance of or payment for closure or post-closure care.

The financial tests demonstrate that the owner, operator or parent corporation has adequate resources to cover closure and post-closure cost estimates. The tests are stringent enough so that, even in the event of a rapid deterioration in the firm's financial health, there is a reasonable assurance that funds will be available to meet RCRA obligations.

The financial test or corporate guarantee offers those qualifying owners or operators a particularly attractive mechanism to meet the RCRA financial assurance requirements. Unlike the surety bond, letter of credit, or insurance policy mechanisms, closure and post-closure costs are not automatically covered by a responsible third party. Because it is offered by the parent corporation of the owner or operator, the corporate guarantee does not involve a third party. Unlike the trust fund mechanism, no funds have to be set aside in anticipation of these costs. Thus, the owner or operator does not have to pay fees for third party guarantees, nor does it have to place funds in a trust fund. While the wording of the corporate guarantee stipulates that something of value be given to the corporate parent in exchange for the guarantee, this is done primarily to ensure that the guarantee agreement will be recognized as a valid legal contract. The amount that actually passes from owner or operator to corporate parent is generally a NOMINAL SUM that could be as little as one dollar.

Because of the lack of third party guarantees or set-aside funds, it is particularly important that the financial test criteria are vigorously enforced. To this end, the Regional Offices must completely re-evaluate every owner, operator, or corporate parent annually, even if there has been no change in closure or post-closure cost estimates. No other financial assurance mechanism requires this level of attention from the Regional Offices.

Owners or operators that wish to satisfy both liability insurance and financial assurance with the financial test should refer to Chapter II of the Liability Insurance Guidance Manual.

The regulations pertaining to the RCRA financial test are as follows:

EXHIBIT VII-1

RCRA FINANCIAL TEST REGULATIONS

Topic	Interim Status	Permitted Facilities
Financial test for closure	40 CFR §265.143(e)	40 CFR §264.143(f)
Financial test for post-closure	40 CFR §265.145(e)	40 CFR §264.145(f)
Required Wording of Letter from Chief Financial Officer	40 CFR §264.151(f)	40 CFR §264.151(f)
Required Wording of Corporate Guarantee	40 CFR §264.151(h)	40 CFR §264.151(h)

Source: Title 40, Code of Federal Regulations (CFR).

B. REQUIREMENTS OF THE FINANCIAL TEST

This section specifies the requirements of the financial test for owners, operators, or their parent corporations. A summary checklist is provided as Attachment VII-1.

INITIAL RESPONSIBILITIES OF THE OWNER OR OPERATOR

1. Qualifications for the Financial Test. The requirements of the financial tests for the owner, operator, or corporate parent are identical. Thus, when referring to the financial test criteria, the word "firm" will be used interchangeably with owner, operator, or corporate parent. To qualify for the corporate guarantee, however, the parent corporation must in addition hold at least 50 percent of the voting stock of the owner or operator firm.

The firm's financial statements must be AUDITED by an independent CERTIFIED PUBLIC ACCOUNTANT. If the accountant gives an ADVERSE OPINION or a DISCLAIMER OF OPINION of the financial statements, the firm can not qualify for the financial test. Furthermore, if the accountant gives a QUALIFIED OPINION of the financial statements, the Regional Administrator may disallow the use of the financial test. See Section VII-C, Regional Office Responsibilities, for more information on accountant's opinions, and under what circumstances the Regional Administrator would disallow use of the financial tests because of a Qualified Opinion.

The financial test requirements may be satisfied by meeting either of the two alternative financial tests. Exhibit VII-2 shows the specific requirements of the two alternative tests. The tests have a number of points in common, but two important differences. First, Alternative I requires a firm to demonstrate financial soundness by passing at least two of three financial ratios, while Alternative II allows to firm to demonstrate financial soundness with an INVESTMENT GRADE bond rating. Second, Alternative I requires the firm to have a large amount of working capital relative to closure and post-closure cost estimates, while Alternative II has no such requirements. Both tests require the owner, operator, or corporate parent to have a large amount of tangible net worth and U.S. assets relative to closure and post-closure estimates, and a minimum absolute level of tangible net worth ($10 million).

These two alternative tests were selected out of over 300 candidate tests, after extensive analysis. The reasoning behind the financial tests and why they were selected is thoroughly explained in the documents cited in Section VII-D, Sources of Further Information.

2. Arranging for the Financial Test and Corporate Guarantee. The only outside arrangements that must be made for the financial test or corporate guarantee are with an independent certified public accountant. Because the vast majority of owners or operators who will select the financial test or corporate guarantee will already have their financial statements or their corporate parent's financial statements independently audited, no explanation of how to select an independent accountant is necessary.

3. Submission of Documents to EPA. To use the financial test as a means of satisfying financial requirements, owners or operators must submit the following:

a) Chief Financial Officer's Letter Including Cost Estimates and Data from Audited Financial Statements. The owner, operator, or corporate parent must submit to the Regional Administrator a letter signed by its chief financial officer. The wording must be as specified in the regulations in force on the date of submittal. A copy of the required wording as it currently appears in the regulations is included as Attachment VII-2. The letter must address all facilities in the United States for which financial assurance is demonstrated by:

EXHIBIT VII-2

ALTERNATIVE FINANCIAL TESTS

Different Provisions of Tests

Alternative I (must meet A, B, C, and D)	Alternative II (must meet A, B, C, and D)
A. Meet two of the following three ratios: (i) TOTAL LIABILITIES/NET WORTH less than 2.0 (ii) The sum of net income plus depreciation, depletion, and amortization/total liabilities greater than 0.1 (iii) CURRENT ASSETS/CURRENT LIABILITIES greater than 1.5	A. A current rating for the most recent bond issuance of either: (i) AAA, AA, A, BBB, as issued by Standard and Poor's; or (ii) Aaa, Aa, A, Baa as issued by Moody's
B. Meet both of the following requirements: (i) NET WORKING CAPITAL at least 6 times the sum of current closure and post-closure cost estimates	

Identical Provisions of Tests

(ii) TANGIBLE NET WORTH at least 6 times the sum of current closure and post-closure cost estimates	B. Tangible net worth at least 6 times the sum of current closure and post-closure cost estimates
C. Tangible net worth of at least $10 million in the U.S.	C. Tangible net worth of at least $10 million
D. Meet one of the following tests: (i) ASSETS in the U.S. amounting to at least 90 percent of total assets (ii) ASSETS in the U.S. amounting to at least 6 times the sum of current closure and post-closure cost estimates	D. Meet one of the following tests: (i) assets in the U.S. amounting to at least 90 percent of total assets (ii) assets in the U.S. amounting to at least 6 times the sum of current closure and post-closure estimates

---

Note:

See glossary for definition of terms.

See Code of Federal Regulations, Title 40, Part 265.143(e) and 145(e) (interim status).
264.143(f) and 145(f) (permitted facility).

- The financial test,
- The corporate guarantee, and
- An equivalent (or substantially equivalent) state financial test.

The letter must also identify the facilities which are not demonstrating financial assurance to EPA or a state; for example, facilities in states with financial assurance requirements that have received PHASE I INTERIM AUTHORIZATION. Facilities covered by alternative financial assurance mechanisms such as surety bonds or letters of credit do not have to be included in the letter.

The amount of the closure and post-closure cost estimates must be provided for all facilities mentioned in the letter. The financial test is applied to the sum of all cost estimates included in the letter, even to facilities not covered by any financial assurance mechanism.

The letter must include the financial test calculations in the appropriate form (see Attachment VII-2).

In preparing the financial test calculations, the chief financial officer of the firm may subtract closure or post-closure cost estimates included as liabilities in the firm's financial statements from the total liabilities figure and add the closure or post-closure cost estimates to the figures for net worth and tangible net worth. This is allowed in order not to penalize firms which are already carrying closure and post-closure costs as liabilities.

b) ACCOUNTANT'S OPINION (same as REPORT ON EXAMINATION). The owner or operator must submit a copy of the independent certified public accountant's opinion of the owner, operator, or parent corporation's year-end financial statements and footnotes for the latest complete fiscal year. There is no EPA required form or wording for this opinion.

c) SPECIAL REPORT. The owner or operator must submit a special report from an independent certified public accountant to the Regional Administrator which contains the accountant's confirmation that the financial data contained in the letter from the chief financial officer can be derived from the independently audited year-end financial statements and footnotes for the latest complete fiscal year. There is no EPA required wording for this report, but a sample special report is shown in Attachment VII-14. The special report must also state that no matters came to the attention of the independent certified public accountant which caused him to believe that the information in the chief financial officer's letter should be adjusted.

d) CORPORATE GUARANTEE. An owner or operator that employs the corporate guarantee must submit a written guarantee agreement completed by the corporate parent, using language exactly as specified in Attachment VII-3.

This is submitted along with the chief financial officer's letter completed by the corporate parent, and the accountant's opinion and special report. completed by the corporate parent. The written guarantee states the guarantor meets or exceeds all the requirements of the financial test criteria, including the submission of the accountant's opinion, the special report, and the letter from the chief financial officer. The written guarantee specifies that in the event the owner or operator fails to perform closure or post-closure care, the guarantor must do so or set up a trust fund for the amount of the current closure or post-closure estimates.

Although the initial cost and financial data must be submitted by the effective date of the regulations, EPA may grant extensions to interim status firms whose fiscal year ends in the 90 days prior to the effective date. The chief financial officer of the firm may request an extension by sending a letter to the EPA Regional Administrator requesting the extension. The chief financial officer must certify in the letter that there are grounds to believe that the owner or operator meets the criteria of the financial test, and indicate the date ending the last complete fiscal year before the effective date of the regulations. The letter must also:

- specify the facilities to be covered by the test, including EPA identification number, name, address, and current closure and post-closure cost estimates to be covered by the test;
- indicate the date on which the required documents will be submitted (within 90 days of the end of the fiscal year);
- certify that the year-end financial statements of the firm will be audited by an independent certified public accountant.

SUBSEQUENT RESPONSIBILITIES OF THE OWNER OR OPERATOR

4. Updating Assurance. For other financial assurance mechanisms, updating of coverage simply involves providing additional amounts of assurance when cost-estimates increase during the operating life of the facility or reducing coverage when cost estimates decrease. When cost estimates increase above the amounts assured by those mechanisms, no change in the instrument is required but either the amount assured must be increased for the original mechanism or supplementary assurance provided by an additional mechanism.

The financial test is somewhat different. If (1) cost estimates increase beyond the maximum amount that can be assured by the firm using the financial test, or (2) the amount that can be assured by the firm drops below the current cost estimates for covered facilities, or (3) some combination of the two, then the owner or operator can no longer use the financial test and must provide alternate assurance. Procedures on options are discussed in Section 5 below.

Of course, the owner or operator using the financial test remains responsible for updating cost estimates due to changes in closure or post-closure plans or adjustments for inflation during the operating life of the facility even if these updates have no impact on the use of the financial test. In addition, during the period of post-closure care, firms may apply to the EPA Regional Administrator for approval of a decrease in the post-closure cost estimate for which the financial test provides financial assurance. Approval will only be granted if the owner or operator demonstrates that amount of the cost estimate exceeds the remaining cost of post-closure care. When applying for a decrease in the post closure cost estimate, the post-closure plan and cost estimate should be submitted to the Regional Administrator for review.

5. Maintaining Assurance. The owner or operator must submit updated information annually within 90 days of the close of the firm's fiscal year. The owner or operator must satisfy all of the financial test criteria at each annual update. As with the initial submission, the updated information consists of the letter from the chief financial officer, the accountant's opinion, and the special report from an independent certified public accountant. If the corporate guarantee is being used by the owner or operator, the written guarantee form must also be submitted. Submissions must be worded exactly as shown in Attachments VII-2 and VII-3.

If the year-end financial statements indicate that the firm is still qualified to use the financial test, but can no longer cover all the closure or post closure costs, it may supplement other mechanisms in combination with the financial test to assure the balance of the costs (see Section B.2 of Chapter II). This situation would occur if the firm could not meet requirement B of Exhibit VII-2, but could meet all other financial assurance requirements. However, if the year-end financial statements indicate that the financial status of the firm has changed so that it is no longer qualifies to use financial test, it is the responsibility of the owner, operator, or corporate parent to notify EPA of intent to establish alternate financial assurance. This situation would occur if the firm could not meet requirements A or C or D of Exhibit VII-2, or any of the other financial assurance requirements. The notice of intent must be sent to the EPA Regional Administrator by certified mail within 90 days after the close of the firm's fiscal year. The owner or operator or parent must provide alternate financial assurance within 120 days after the close of the firm's fiscal year.

If at anytime the EPA Regional Administrator believes that an owner or operator no longer satisfies the requirements of the financial test, he may require a report of financial condition in addition to the required annual reports. An explanation of why a Regional Administrator may believe that a firm no longer satisfies the financial test, and what additional reports may be required, is presented in Section C below. If the Regional Administrator determines that the requirements are not met, the owner or operator must alternate financial assurance to EPA within 30 days after notification of EPA's finding.

The Regional Administrator must be notified by certified mail by the owner or operator or parent guarantor within 10 days after the commencement of a bankruptcy proceeding naming the owner, operator, or parent guarantor as debtor.

Also, if either the owner or operator, or the corporate parent is sold or merged, the new parent must meet all the criteria for the financial test, or alternative assurance must be provided.

6. Cancelling the Corporate Guarantee. A parent corporation wishing to cancel its guarantee of financial assurance must notify EPA and the owner or operator by certified mail of its intent to cancel. Actual cancellation may not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator, as evidenced by the return receipts. If the owner or operator fails to provide alternate financial assurance and obtain written approval of the assurance mechanism by the Regional Administrator within 90 days after receipt of the notification of cancellation, the parent corporation must provide alternate financial assurance in the name of the owner or operator.

7. Drawing on Funds for Closure or Post-Closure. The owner or operator must use its own funds to pay for final closure and post-closure care of facilities covered by the financial test or corporate guarantee. The parent guarantor agrees to either perform these obligations or establish a trust fund in the name of the owner or operator if the owner or operator fails to fulfill its obligations when required to do so.

8. Termination of the Corporate Guarantee. The parent guarantor may request the approval of the Regional Administrator to terminate the corporate guarantee in two situations: (1) when alternate financial assurance has been substituted (see Section E.4 of Chapter II) and (2) when the owner or operator is released from applicable RCRA financial assurance requirements (see Section G of Chapter II).

PERMITTED FACILITY REQUIREMENTS

A new permitted facility must submit the letter from the chief financial officer and the opinion and special report from an independent certified public accountant at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. There is no provision for extending this deadline to accommodate firms whose fiscal years end ninety days before.

C. REGIONAL OFFICE RESPONSIBILITIES

This section outlines the duties of the EPA Regional Office in reviewing the submission of financial data ensuring satisfaction of requirements. A summary checklist appears in Attachment VII-4 at the end of this chapter.

REVIEWING INITIAL SUBMISSIONS

1. Qualifications of Accountant and Parent Guarantor

EPA personnel should first confirm that the independent certified public accountant responsible for preparing the opinion and special report is certified by an officially recognized accreditation organization. Staff can check the credentials of the accountant by contacting the State Board of Accountancy in the state where the accountant resides, if there is any doubt about the accountant's qualifications. These are listed in Appendix B-4.

In addition to verifying financial data from parent corporations, Regional personnel should determine whether the corporation qualifies as a parent corporation. The parent must own at least 50 percent of the voting stock of the subsidiary. If the parent files with the SEC, verification may be made by checking the form 10-K filed with the SEC. If not, the independently audited financial statements of the firm must be requested from the firm. Both the 10-K and the independently audited statements will list the subsidiaries of the corporation in addition to other financial information.

2. Conformity to Other Requirements

A. Chief Financial Officer's Letter

EPA personnel should review the letter from the chief financial officer and verify that it is complete and accurate. The firm should be contacted to verify that the signatory of the letter is the chief financial officer. If any of the criteria for the financial test are not met, or if anything is missing from the letter, the Regional Administrator should immediately notify the submitter, and ensure that alternative financial assurance mechanisms are provided or proper submissions are made.

The Regional Office should ensure that all relevant facilities of the owner or operator are included in the Chief Financial Officer's letter. This includes facilities covered by the financial test guarantee, facilities covered by the corporate guarantee, facilities covered by an equivalent (or substantially equivalent) state financial test, and facilities for which no financial assurance has been demonstrated. The Hazardous Waste Data Management System (HWDMS) may include information that will be useful in making this determination. See Chapter II, Section I for more details on the HWDMS.

If there is any reason to suspect the validity of the financial data, for example if the firm barely passes the test criteria, the Regional Administrator may want to request the audited financial statements from the firm, or obtain the FORM 10K from the SEC (see Section VII-D, Sources of Further Information), and recalculate the financial ratios. Moody's or Standard and Poor's bond guides may be checked to verify the bond ratings are as claimed. Major libraries (public and university) as well as libraries in Regional Offices of the U.S. Securities and Exchange Commission (SEC) should have current editions of the guides. The reference staff of any library will know where the nearest copies are held.

To assist in future evaluations of the submitter, it is strongly recommended that the Regional staff establish a file of data taken directly from the chief financial officer's letter for each owner, operator or corporate parent. Exhibit VII-4 is an example of such a file. The use of the file will be described below.

B. Review of the Accountant's Opinion of the Financial Statements

EPA personnel should next determine what kind of opinion was expressed by the accountant: Unqualified Opinion, Qualified Opinion, Adverse Opinion, or Disclaimer of Opinion.

An Unqualified Opinion can be recognized because it usually consists of two short paragraphs expressing no doubts about the financial statements. See Attachment VII-5 for two examples of Unqualified Opinions.

Qualified Opinions express some reservations by the accountant that the financial statements fairly or completely represent the financial condition and operating results of the firm. Qualified Opinions are easily recognized because the final paragraph of the opinion will usually begin with "In our opinion, subject to ...", or "In our opinion, except for ...".

"Except for" Qualified Opinions are given when the accountant believes the financial statements, except for certain qualifications, represent fairly the economic condition of the firm. The phrase "except for" appears somewhere in the opinion. Examples of "Except for" Qualified Opinions are given in Attachments VII-9, VII-10, and VII-11.

"Subject to" Qualified Opinions are given when the accountant believes the financial statements only represent fairly the economic condition of the firm subject to the outcome of certain unforeseeable events. Examples of "Subject to" Qualified Opinions are given in Attachments VII-8, VII-12, and VII-13.

An Adverse Opinion is given when the accountant believes that the financial statements do not present fairly the financial condition of the firm. The auditor will clearly state this in the final paragraph of the opinion. An examle of an adverse opinion is given in Attachment VIII-6.

A Disclaimer of Opinion means that the accountant cannot express an opinion on the financial statements of the firm. A report or examination will still be given, but the final paragraph will state that an opinion could not be expressed on the financial statements. An example of a disclaimer of opinion is given in Attachment VII-7.

Some examples of conditions likely to result in a Qualified Opinion, Adverse Opinion, and Disclaimer of Opinion are given in Attachment VII-14

When evaluating accountants' opinions, EPA personnel should:

1. Immediately "pass" an owner or operator if it has received an Unqualified Opinion and meets all the other requirements. Most owners or operators, at least 90%, will probably have Unqualified Opinions. Accountants generally render Unqualified Opinions to most large companies. Since owners or operators must have a tangible net worth of at least $10 million to qualify for the financial test, most applicants should fall into this category. See Attachment VII-5 for two examples of an Unqualified Opinion.

2. Immediately disqualify an owner or operator from the financial test if he has received either (1) an Adverse Opinion, (2) a Disclaimer of Opinion. None of the owners or operators should have these types of opinions. The regulations explicitly disqualify owners or operators from the financial test if they have either of first two types of opinions. In addition, although not specifically addressed in the regulation, a "subject to" type of Qualified Opinion based on a "going concern" issue is generally considered so serious that any firm receiving one should be immediately disqualified from the financial test. See Attachment VII-8 for an example of a "subject to" Qualified Opinion based on a "going concern" issue.

3. Conduct further investigations if an owner or operator received any other type of Qualified Opinion (either an "except for" or a "subject to"). A small number of owners or operators, approximately 10%, will probably have Qualified Opinions. Most of the review effort should be directed toward owners or operators falling into this category.

EPA Staff should undertake the following four steps whenever an owner or operator has a Qualified Opinion (either an "except for" or "subject to," excluding those rendered on the basis of a "going concern" issue).

1. The owner, operator, or corporate parent should be asked to submit a copy of the latest financial statements. Alternatively, a copy of the latest Form 10-K could be obtained from the SEC.

2. The opinion rendered by the accountant should be thoroughly understood in the context of the financial statements:

- If it is an "except for" opinion, the EPA staff should determine if the part of the statements which give rise to the "except for" qualification have any bearing on the firm's ability to pass the financial test.

- If it is a "subject to" opinion, EPA staff should determine the likelihood of the occurrence of the event the accuracy of the financial statements are "subject to," and the importance of the unforeseeable event's occurrence or nonoccurrence on the firm's ability to pass the financial test.

3. If not enough information is available in the opinion or the financial statements to make a satisfactory decision, the firm should be required to submit a written explanation as to why the qualification should not be grounds for disqualification from the financial test.

4. If the matter is still unresolved, contact EPA headquarters for additional assistance.

C. Special Report from Auditor

EPA personnel should review the auditor's confirmation of the letter from the Chief Financial Officer, and verify that the auditor has reviewed the data specified in the Chief Financial Officer's letter and was able to trace the data back to amounts found in the owner's or operator's independently audited, year-end financial statements for the latest fiscal year. It should be noted that the auditor's confirmation does not pass judgment on whether the owner, operator, or corporate parent is economically viable, nor does it assess the value of the financial data contained in the letter. See Attachment VII-15 for an example of an auditor's confirmation.

D. Corporate Guarantee

The written guarantee form should be verified for completeness and accuracy. The wording should be identical to that prescribed in the regulations. (See Attachment VII-3.)

3. Recordkeeping and Tracking Systems. As financial information and corporate guarantees are received, relevant information should be recorded including the name, address, and EPA Identification Number of the covered facilities; name of the corporate guarantor; amount of coverage for each facility and effective date; and information verification procedures performed. Regional Office staff could keep a file on each submitting firm, such as the one shown in Exhibit VII-4, which keeps track of key financial data.

EXHIBIT VII-3

SAMPLE FILE ON OWNER, OPERATOR, OR CORPORATE PARENT

DATE OF
CLOSE OF FISCAL YEAR ____________________

Owner/Operator ___________________________
Corporate Parent _________________________

		Initial Year	Second Year	Third Year
1.	Sum of total closure and post-closure cost estimates			
2.	Bond Rating			
*3.	Total Liabilities			
*4.	Tangible Net Worth			
*5.	Net Worth			
*6.	Current Assets			
*7.	Current Liabilities			
*8.	Net Working Capital			
*9.	Sum of Net Income, Depreciation, Depletion, and Amortization			
*10.	Total assets in U.S.			
11.	Line 4 divided by Line 1			
12.	Line 8 divided by Line 1			
13.	Line 10 divided by Line 1			

---

* Denotes figures derived from financial statements.

EXHIBIT VII-3 (continued)

SAMPLE FILE ON OWNER, OPERATOR, OR CORPORATE PARENT

	Initial Year	Second Year	Third Year
14. Line 9 divided by Line 3			
15. Line 6 divided by Line 7			
16. Line 3 divided by Line 5			
17. Qualified Auditor's Opinion?			
18. Cost estimates changed because of changes in operating plans?			

NOTES:

[Adverse Business Press Releases, Competitive Problems, Drop in Bond Ratings]

SUBSEQUENT RESPONSIBILITIES

4. Updating Coverage. As cost estimates for closure and post-closure are adjusted for inflation or revised due to changes in plans, the Regional Administrator will need to (1) ensure that the financial test criteria are still satisifed if closure or post-closure cost estimates increase and (2) respond to requests for reduction if post-closure cost estimates decrease.

5. Maintaining Assurance. The Regional Administrator must re-evaluate each owner or operator every year. Thus, the same procedures should be followed that were outlined for Initial Responsibilities:

- Reviewing Annual Submissions. The owner, operator, or corporate parent must resubmit updated information, that is, the letter from the Chief Financial Officer, the accountants' opinion and special audit report, and the written guarantee within 90 days after the close of every fiscal year. Failure to do so could be an indication of financial deterioration in the submitting firm, so late submitters should be watched closely. All the financial test criteria must be met; if not the Regional Administrator should issue a notice of disallowance.

If the firm barely passes any of financial test criteria, it should be subjected to further investigation. In addition, further investigation should be made into firms whose bond rating or net worth has fallen from previous submissions (lines 2, 4 and 5 in Exhibit VII-2) or where the required financial ratios have deteriorated significantly (i.e. if lines 11-15 fall, or if line 16 rises).

- On-going Monitoring. The Regional Office staff can monitor the business press for adverse news about owners, operators, or corporate parents. Ideally, an online computerized business data base service such as DIALOG could be used for this purpose. Through the computerized data base, or manually, the Business Periodical Index and the F&S Corporate Index should be searched using the firm's name as a "keyword," for:

- Omission of a dividend
- Delisting from an exchange, Suspended trading
- Mergers, Acquisitions, Divestitures,
- Financial losses, Competitive problems,
- Bankruptcy proceedings,
- Decreases in bond ratings, and
- Sharp stock price decreases.

If any of the above or other inauspicious events occur, the firm should be singled out for further investigation. Regional Offices should coordinate their review efforts with EPA Headquarters. Approaches to centralize review procedures for the financial test are currently under investigation.

- Further Investigation. The Regional Administrator has broad powers to obtain reports of financial condition from the owner, operator, or corporate parent, if he believes that the firm may no longer meet the financial test criteria. At a minimum, if there is any suspicion of non-compliance the latest quarterly financial report should be obtained from the firms, or the FORM 10-Q obtained from the SEC. See Section D below.

Ratios from the quarterly financial report or Form 10-Q should be calculated to see if the firm still meets the test requirements. The Standard and Poor's or Moody's bond guides should be checked, if relevant, to verify that the latest bond ratings are still investment grade. Firms singled out for further investigation should be monitored more frequently than annually.

The Regional Administrator, based on the owner, operator, or parent's reports of financial condition or any other materials, may at any time find that the owner, operator or corporate parent no longer meets the financial test criteria. If so, the owner, operator, or corporate parent must provide alternative financial assurance within 30 days after receiving notification of this finding.

In addition, the Regional Office should ensure that assurance is maintained by the owner, operator or corporate guarantor:

- following receipt of notice of intent to establish alternate assurance because the owner or operator or guarantor no longer meets the financial test requirements -- such assurance must be provided within 120 days after the end of the fiscal year; and
- whenever the owner or operator fails to perform final closure or post-closure care in accordance with the plans or other requirements, the guarantor must perform or establish a trust fund in the name of the owner or operator.

In the latter case, the RCRA trust fund rules will apply. See Chapter III for details.

6. Cancelling the Corporate Guarantee. The corporate parent may cancel its guarantee of financial assurance, although actual cancellation may not occur during the 120 days after receipt of notification by both EPA and the owner or operator. The Regional Administrator should ensure that the owner, operator, or corporate parent supplies alternative financial assurance with the approval of the Regional Administrator within 90 days. If not, the Regional Administrator must draw on the corporate guarantee before the 120 days have passed and the guarantee is cancelled.

7. Drawing on Funds For Closure or Post-Closure. The Regional Administrator is authorized to draw upon the corporate guarantee for closure and/or post-closure when:

1) the owner or operator fails to provide alternate assurance within 90 days after they and the Regional Administrator receive notice of cancellation from the parent guarantor, or

2) following a determination pursuant to §3008 of RCRA that the owner or operator has failed to perform closure or post-closure care in accordance with previously approved plans whenever required to do so.

In the second case, the parent guarantor must perform closure or post-closure care, or set up a trust fund as specified in §265.145(a) in the name of the owner or operator.

8. Requests to Terminate the Corporate Guarantee. The Regional Administrator may consent to the termination of the corporate guarantee only (1) if alternate assurance is provided (see Section E.4 of Chapter II) or (2) if the owner or operator is released from applicable RCRA financial requirements (see Section G of Chapter II).

D. SOURCES OF FURTHER INFORMATION

For further information on the financial test, see General Research Corporation Background Document for the Financial Test and Municipal Revenue Test, 11/30/81 including Appendix A and Appendix B.

Standard reference books include:

American Institute of Certified Public Accountants. AICPA Professional Standards - Volume 1, June 1, 1981.

Burton, Palmer, and Kay. Handbook of Accounting and Auditing, Boston: Warren, Gorham and Lamont, 1981.

Kohler, Eric L. A Dictionary for Accountants, New Jersey: Prentice Hall, Inc. (Fourth edition 1970).

Lev, Baruch. Financial Statement Analysis - A New Approach, New Jersey: Prentice-Hall, Inc., 1974.

Merrill Lynch Pierce Fenner & Smith, Inc. How to Read a Financial Report, May 1979.

Myer, John N. Understanding Financial Statements, American Research Council, Inc., 1964.

Myer, John N. Accounting for Non-Accountants, New York: New York University Press, 1957.

Myer, John N. Financial Statement Analysis, Englewood
Cliffs: Prentice Hall Inc., 1969.

To obtain Form 10-K or 10-Q reports from the SEC, contact: The U.S. Securities and Exchange Commission's Public Reference Room, located at 1100 L Street, N.W., Washington, D.C. (telephone: (202) 523-5506).

State Boards of Accountancy are listed in Appendix B-4.

Finally, the American Institute of Certified Public Accountants, 1620 Eye Street, N.W., Washington, D.C. 20006, (202) 872-8190 may be of assistance.

ATTACHMENT VII-1

RCRA FINANCIAL TEST CHECKLIST FOR OWNERS OR OPERATORS

Paragraph
Number *

(1) ___ Owner, operator, or corporate parent's financial statements are independently audited.

(2) ___ Owner, operator, or corporate parent meets requirements of Alternative I or Alternative II.

" ___ Corporate parent holds at least 50 percent of the voting stock of the owner or operator firm.

(3) ___ Submit letter from chief financial officer.

" ___ Submit independent CPA's report on examination of year-end financial statements.

" ___ Submit independent CPA's Special Report confirming data in chief financial officer's letter.

" ___ Submit written corporate guarantee if parent corporation is meeting financial test.

" ___ Request extension of initial reporting deadline if fiscal year ends less than 90 days before effective date of regulations.

---

* Numbers correspond to the paragraphs in Section B.

ATTACHMENT VII-1 (continued)

RCRA FINANCIAL TEST CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(4) ___ Update closure or post-closure cost estimates when increased by inflation or revisions in closure/post-closure plans during the operating life of the facility.

(5) ___ Submit no later than 90 days after the end of every fiscal year an updated:

" ___ • Chief financial officer's Letter

" ___ • Independent CPA's report on examination of year-end financial statements

" ___ • Independent CPA's confirmation of data in Chief Financial Officer's letter

" ___ Notify EPA if firm or parent corporation no longer meets requirements of financial test or if parent corporation no longer meets ownership requirements. Provide alternate assurance.

(6) ___ Provide alternate financial assurance and obtain written approval by the Regional Administrator of the assurance within 90 days after notification by parent corporation of cancellation of the corporate guarantee.

ATTACHMENT VII-2

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER
40 CFR 264.151(f)

[Address to Regional Administrator of every region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ______________________________.

2. This firm guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ______________________________.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ______________________________.

ATTACHMENT VII-2 (continued)

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER
40 CFR 264.151(f)

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

This fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements and footnotes for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of §§264.143 or 264.145, or of paragraph (e)(1)(i) of §§265.143 or 265.145 of this chapter are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of §§264.143 or 264.145, or of paragraph (e)(1)(ii) of §§265.143 or 265.145 of this chapter are used.]

ATTACHMENT VII-2 (continued)

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER
40 CFR 264.151(f)

ALTERNATIVE I

1.	Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above]	$________	
*2.	Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]	$________	
*3.	Tangible net worth	$________	
*4	Net worth	$________	
*5.	Current assets	$________	
*6.	Current liabilities	$________	
*7.	Net working capital [line 5 minus line 6]	$________	
*8.	The sum of net income plus depreciation, depletion, and amortization	$________	
*9.	Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	$________	
		Yes	No
10.	Is line 3 at least $10 million?	___	___
11.	Is line 3 at least 6 times line 1?	___	___
12.	Is line 7 at least 6 times line 1?	___	___

---

* Denotes figures derived from financial statements.

ATTACHMENT VII-2 (continued)

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER
40 CFR 264.151(f)

ALTERNATIVE I (continued)

13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14. ___ ___

14. Is line 9 at least 6 times line 1? ___ ___

15. Is line 2 divided by line 4 less than 2.0? ___ ___

16. Is line 8 divided by line 2 greater than 0.1? ___ ___

17. Is line 5 divided by line 6 greater than 1.5? ___ ___

---

* Denotes figures derived from financial statements.

ATTACHMENT VII-2 (continued)

REQUIRED WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER
40 CFR 264.151(f)

ALTERNATIVE II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above] $ ____________

2. Current bond rating of most recent issuance of this firm and name of rating service ____________

3. Date of issuance of bond ____________

4 Date of maturity of bond ____________

*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $ ____________

*6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) $ ____________

		Yes	No
7.	Is line 5 at least $10 million?	____	____
8.	Is line 5 at least 6 times line 1?	____	____
*9.	Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 10.	____	____
10.	Is line 6 at least 6 times line 1?	____	____

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

ATTACHMENT VII-3

REQUIRED WORDING FOR CORPORATE GUARANTEE
40 CFR 264.151(g)

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the United States Environmental Protection Agency (EPA), obligee, on behalf of our subsidiary [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Subpart G of 40 CFR Parts 264 and 265 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to EPA that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in Subpart H of 40 CFR Parts 264 and 265.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

ATTACHMENT VII-3 (continued)

REQUIRED WORDING FOR CORPORATE GUARANTEE
40 CFR 264.151(g)

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR Parts 264 or 265.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of Subpart H of 40 CFR Parts 264 and 265 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by both EPA and [owner or operator], as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Subpart H of 40 CFR Parts 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

ATTACHMENT VII-3 (continued)

REQUIRED WORDING FOR CORPORATE GUARANTEE
40 CFR 264.151(g)

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective date: ____________________

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: ____________________

ATTACHMENT VII-4

RCRA FINANCIAL TEST CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator should ensure that:

Paragraph Number *

(1) ___ Credentials of the independent certified public accountant are valid.

" ___ Corporate guarantor qualifies as a corporate parent of the owner or operator.

(2) ___ The required criteria are satisfied in the chief financial officer's letter.

" ___ The signature of chief financial officer is verified.

" ___ Independent auditor's report on examination of year-end financial statements is reviewed:

" ___ • "Pass" firms with unqualified opinions who otherwise qualify.

" ___ • Immediately disqualify firms with disclaimers of opinion, or adverse opinions, or "subject to" qualified opinions based on a "going concern" issue, regardless of other qualifications.

" ___ • Submit to further investigation firms with any other type of qualified opinion.

" ___ Independent auditor's special report, confirming chief financial officer's letter is acceptable.

" ___ The wording of the written guarantee of corporate parent is identical to that required by RCRA regulations.

---

* Numbers correspond to paragraphs in Section C.

ATTACHMENT VII-4 (continued)

RCRA FINANCIAL TEST CHECKLIST FOR REGIONAL OFFICES

Paragraph
Number *

(2) ___ All facilities are accounted for in chief financial officer's letter.

(4) ___ Subsequent submissions account for changes in cost estimates due to either inflation or revised closure/post-closure plans.

(5) ___ The following are submitted no later than 90 days after the close of the fiscal year:

" ___ • Updated chief financial officer's letter

" ___ • Independent auditor's report on examination of year end financial statements.

" ___ • Updated special report

" ___ • Updated written guarantee

" ___ Firms are subjected to further investigation if:

" ___ • Firm barely passes financial test criteria
" ___ • Firm is late to submit updated information
" ___ • Bond ratings have fallen
" ___ • Financial ratios have deteriorated
" ___ • Adverse business reports in media

" ___ If financial submissions do not satisfy the tests and notification of disallowance is issued, the firm is monitored to ensure provision of alternate assurance within 30 days after notification.

(6) ___ If parent corporation indicates intent to cancel its guarantee, the owner or operator is monitored to ensure provision of alternate assurance within 90 days after they and EPA are notified by the parent of cancellation.

(6) ___ If alternate assurance is not provided by the owner or operator within 90 days after notification of cancellation, the Regional Administrator has 30 more days in which to draw upon the corporate guarantee before it lapses.

ATTACHMENT VII-5

EXAMPLES OF UNQUALIFIED OPINIONS

The following is an unqualified report covering two years of a corporation's statements. It is prepared in this form when the accountant has no limitations on scope, no reservations as to his opinion and feels no supplemental information is needed in a middle paragraph:

Example 1: Unqualified Two-Year Opinion

> "We have examined the balance sheets of XYZ Company, Inc. as of December 31, 19X1 and 19X0, and the related statements of earnings, stockholders' equity* and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.
>
> In our opinion, the financial statements referred to above present fairly the financial position of XYZ Company, Inc. as of December 31, 19X1 and 19X0, and the results of its operations and the changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis."

Based on accounting practice, it is preferable to present comparative financial statements and to cover two or three years. However, for non-public companies, it is still acceptable to present and report on only the current year. In those situations, the report is modified to cover only that one year. Where the prior year's financials are presented, but are unaudited or were examined by another auditor, the current report must acknowledge that fact.

---

* When appropriate, the terms "retained earnings" and "additional paid-in capital" are substituted for "stockholders' equity."

ATTACHMENT VII-5 (continued)

EXAMPLES OF UNQUALIFIED OPINIONS

Example 2: Unqualified Three-Year Opinion for SEC Registrants

"We have examined the balance sheets of ABC Company at December 31, 19X3 and 19X2, and the related statements of income, retained earnings and changes in financial position for each of the three years in the period ended December 31, 19X3. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedurs as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of ABC Company at December 31, 19X3 and 19X2, and the results of its operations and the changes in its financial position for each of the three years in the period ended December 31, 19X3, in conformity with generally accepted accounting principles applied on a consistent basis."

ATTACHMENT VII-6

EXAMPLE OF AN ADVERSE OPINION

An Adverse Opinion is a extreme form of an "except for" Qualified Opinion in the case of a generally accepted accounting principles (GAAP) violation.

> "As discussed in Note X to the financial statements, the Company carries its property, plant and equipment accounts at appraisal values and provides depreciation on the basis of such values. Further, the Company does not provide for income taxes with respect to differences between financial income and taxable income arising because of the use, for income tax purposes, of the installment method of reporting gross profit from certain types of sales. Generally accepted accounting principles, in our opinion, require that property, plant and equipment be stated at an amount not in excess of cost, reduced by depreciation based on such amount and that deferred income taxes be provided. Because of the departures from generally accepted accounting principles identified above, as of December 31, 19XX, inventories have been increased $..... by inclusion in manufacturing overhead of depreciation in excess of that based on cost; property, plant and equipment, less accumulated depreciation, is carried at $..... in excess of an amount based on the cost to the Company; and allocated income tax of $..... has not been recorded, resulting in an increase of $..... in retained earnings and in appraisal surplus of $..... For the year ended December 31, 19XX, cost of goods sold has been increased $..... because of the effects of the depreciation accounting referred to above, and deferred income taxes of $..... have not been provided, resulting in an increase in net income and earnings per share of $..... and $....., respectively.
>
> In our opinion, because of the effects of the matters discussed in the preceding paragraph, the financial statements referred to above do not present fairly, in conformity with generally accepted accounting principles, the financial position of X Company as of December 31, 19XX, or the results of its operations and changes in its financial position for the year then ended."

ATTACHMENT VII-7

EXAMPLE OF A DISCLAIMER OF OPINION

A disclaimer of opinion mean that the accountant can not express an opinion on the financial statements of the firm. An example of a disclaimer resulting from an extreme form of a scope restriction follows:

> "... Except as set forth in the following paragraph, our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.
>
> The Company did not take a physical inventory of merchandise, stated at $..... in the accompanying financial statements as of December 31, 19XX, and at $..... as of December 31, 19X1. Further, evidence supporting the cost of property and equipment acquired prior to December 31, 19XX, is no longer available. The Company's records do not permit the application of adequate alternative procedures regarding the inventories or the cost of property and equipment.
>
> Since the Company did not take physical inventories and we were unable to apply adequate alternative procedures regarding inventories and the cost of property and equipment, as noted in the preceding paragraph, the scope of our work was not sufficient to enable us to express, and we do not express, an opinion on the financial statements referred to above."

ATTACHMENT VII-8

EXAMPLES OF A "SUBJECT TO" QUALIFIED OPINION BASED ON A "GOING CONCERN" ISSUE

The following are "subject to" Qualified Opinions based on a "going concern" issue. In both instances, the survival of the firm is uncertain.

Example 1

> "The financial statements referred to previously have been prepared using generally accepted accounting principles applicable to a going concern which contemplates the realization of assets and the liquidation of liabilities in the normal course of business. However, continuation of the Company as a going concern is dependent upon its obtaining additional financing and achieving profitable operations. At December 31, 19X1, adverse operating results had reduced the Company's working capital below the amounts required under long-term debt agreements. As explained in Note , the working capital requirements under the debt agreements have been waived until December 31, 19X2. Should losses continue and the lenders exercise their rights under the debt agreements to accelerate the maturities of long-term debt, the order of maturity of the liabilities and the carrying values of assets would be significantly affected.
>
> In our opinion, subject to the possible effects of such adjustments, if any, as might have been required had the outcome of the uncertainties relating to the Company's continuance as a going concern been known, the financial statements referred to above present fairly the financial position of ABC Corporation, Inc. at December 31, 19X2 and 19X1."

ATTACHMENT VII-8 (continued)

EXAMPLES OF A "SUBJECT TO" QUALIFIED OPINION BASED ON A "GOING CONCERN" ISSUE

Example 2

> "The financial statements referred to above have been prepared on a going concern basis and do not reflect any downward adjustments (prsently not determinable) to the carrying value of assets which could be required in the event of disposal other than in the ordinary course of business. Continuation of the business is dependent on (1) consummation of debt restructuring agreements as discussed in Note , (2) maintaining adequate financing arrangements with all lenders (3) achieving profitable operations. Should any of these circumstances interrupt the continuity of the business, the realization of assets and order of maturity of liabilities may be adversely affected.
>
> In our opinion, subject to the possible effects of such adjustments, if any, as might have been required had the outcome of the uncertainties relating to the Company's continuance as a going concern been known, the financial statements referred to above present fairly the financial position of ABC Corporation, Inc. at December 31, 19X2 and 19X1."

ATTACHMENT VII-9

EXAMPLE OF AN "EXCEPT FOR" QUALIFIED OPINION DUE TO A SCOPE LIMITATION

We were not able to observe the taking of the physical inventories of cut timber, which were necessarily taken as of September 30, in 19X2 and 19X1, since those dates were prior to the time we are initially engaged as auditors for the Company. The cut timber inventory was stated at $ and $ at September 30, 19X2 and 19X1, respectively. Due to the nature of the Company's records, we were unable to satisfy ourselves as to the inventory quantities by means of other auditing procedures.

In our opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had we been able to observe the physical inventories of cut timber...."

ATTACHMENT VII-10

EXAMPLE OF AN "EXCEPT FOR" QUALIFIED OPINION DUE TO VARIANCES FROM GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

"The Company has excluded from property and debt in the accompanying balance sheet certain lease obligations, which, in our opinion, should be capitalized in order to conform with generally accepted accounting principles. If these lease obligations were capitalized, property would be increased by $, long-term debt by $ and retained earnings by $ as of December 31, 19XX, and net income and earnings per share would be increased (decreased) by $ and $, respectively, for the year then ended.

In our opinion, except for the effects of not capitalizing lease obligations, as discussed in the preceding paragraph, the financial statements present fairly...."

ATTACHMENT VII-11

EXAMPLES OF AN "EXCEPT FOR" QUALIFIED OPINION DUE TO INCONSISTENCIES IN A COMPANY'S APPLICATION OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

The following two examples illustrate how a similar "except for" situation might be reported differently by different accountants.

Example 1

> "In our opinion ... generally accepted accounting principles consistently applied during the period except for the change, with which we concur, in the method of computing depreciation as described in Note A to the financial statements."

Example 2

> "As disclosed in Note A to the financial statements, the Company has adopted the sum-of-the-years digits method for computing depreciation, whereas it previously used the straight-line method. In our opinion the Company has provided reasonable justification for making a change as required by the generally accepted accounting principles.
>
> In our opinion, except for the change in accounting principles as stated above, the financial statements referred to above present fairly the financial position of X Company as of October 31, 19 , and the results of its operations and the changes in its financial position for the year the ended, in conformity with generally accepted accounting principles."

ATTACHMENT VII-12

EXAMPLE OF "SUBJECT TO" QUALIFIED OPINION DUE TO AN UNCERTAINTY REGARDING THE OUTCOME OF A JUDICIAL PROCEEDING

"As discussed in Note X to the financial statements, the Company is defendant in a lawsuit alleging infringement of certain patent rights and claiming royalties and punitive damages. The Company has filed a counteraction, and preliminary hearings and discovery proceedings on both actions are in progress. Company officers and counsel believe the Company has a good chance of prevailing, but the ultimate outcome of the lawsuits cannot presently be determined, and no provision for any liability that may result has been made in the financial statements.

In our opinion, subject to the effects of such adjustments, if any, as might have been required had the outcome of the uncertainty referred to in the preceding paragraph been known, the financial statements referred to above present fairly the financial position of ABC Company as of (current year-end) and the results of its operations and the changes in its financial position, in conformity with generally accepted accounting principles."

ATTACHMENT VII-13

EXAMPLE OF A "SUBJECT TO" QUALIFIED OPINION DUE TO A COMPANY WITHOUT AN OPERATING HISTORY

Often there is uncertainty about the ability of a new enterprise to establish a profitable level of operations. It has become accepted practice to render "subject to" opinions in these "development stage" situations. The middle paragraph must recite all of the uncertainties facing the company and that recitation is frequently quite extensive.

> "We have examined the balance sheet of ABC Corporation, Inc., as of December 31, 19X2 and 19X1, and the related statements of operations, changes in stockholders' equity and changes in financial position for the years then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.
>
> The Corporation is in the development stage as of December 31, 19X2. The accompanying financial statements have been prepared in accordance with generally accepted accounting principles applicable to a going concern which contemplates the realization of assets and liquidation of liabilities in the normal course of business. However, recovery of the Corporation's assets is dependent upon future events, the outcome of which is currently indeterminable. Additionally, successful completion of the Corporation's development program and its transition, ultimately, to attaining profitable operations is dependent upon obtaining financing adequate to fulfill its development activities and achieving a level of sales adequate to support the Corporation's cost structure. Should any of these events not occur, the accompanying financial statements may be affected materially.
>
> In our opinion, subject to the ultimate resolution of the uncertainties described in the preceding paragraph, the financial statements referred to above present fairly the financial position of ABS Corporation, Inc. at December 31, 19X2 and 19X1, and the results of its operations, changes in its stockholders' equity and changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis."

ATTACHMENT VII-14

CONDITIONS LIKELY TO RESULT IN A QUALIFIED OPINION, ADVERSE OPINION AND DISCLAIMER OF OPINION

CONDITION

VIOLATION OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP)

"Except for" Qualified Opinion - Violation is not overwhelming or pervasive to financial statements as a whole.

- o Lease obligations that were not capitalized that auditor thinks should have been capitalized
- o Omission of disclosure that the auditor thinks should be included

Adverse Opinion - Violation is overwhelming or pervasive to financial statements as a whole.

- o A large company uses the cash basis rather than the accrual basis of accounting and thus, does not match expenses with revenues for the accounting period.

UNCERTAINTY

"Subject To" Qualified Opinion

Internal Matters	External Matters
o Loss of management or other key personnel	o Legal proceedings
o Negative trends recurring operating losses, negative cash flow	o Legislation
o Work stoppages	o Loss of key franchise, license, or patent
o Uneconomical long-term commitments	o Loss of a principal customer or supplier
	o Uninsured catastrophes

Disclaimer of Opinion

- o It is impossible to determine the future operational activity of company or the effect of material uncertainties.

SCOPE LIMITATIONS

"Except for" Qualified Opinion

- o Segments of inventory not observed at beginning or end of year (not so significant as to require a disclaimer).
- o Joint ventures were not audited.

Disclaimer of Opinion

- o The accounting/operating systems are so unreliable that an audit cannot be performed.

ATTACHMENT VII-15

EXAMPLE OF AUDITOR'S SPECIAL REPORT, CONFIRMATION OF CHIEF FINANCIAL OFFICER'S LETTER

We have examined the financial statements of XYZ Company for the year ended December 31, 19X1, and have issued our report thereon dated March 15, 19X2. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The Company has prepared documents to demonstrate its financial responsibility under the Environmental Protection Agency's financial assurance regulations, in compliance with 40 CFR 264 and 265, Subpart H. This letter is furnished to assist the Company in complying with these regulations and should not be used for other purposes.

The attached schedule reconciles the specified information furnished in the Chief Financial Officer's Letter in response to the regulations with the Company's financial statements. In connection therewith, we have:

1. Agreed the amounts in the column "per financial statements" with amounts contained in the Company's financial statements for the year ended December 31, 19X1.

2. Agreed the amounts in the column "per Chief Financial Officer's Letter" to the Letter prepared in response to the regulations.

3. Agreed the amounts in the column "reconciling items" to analyses prepared by the Company setting forth the indicated items.

4. Recomputed the totals and percentages.

Because the above procedures do not constitute an examination made in accordance with generally accepted auditing standards, we do not express an opinion on any amounts or items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe the Schedule should be adjusted.

ATTACHMENT VII-15 (continued)

XYZ COMPANY

YEAR ENDED DECEMBER 31, 19X1

SCHEDULE RECONCILING AMOUNTS CONTAINED IN THE CHIEF FINANCIAL OFFICER'S LETTER FURNISHED IN RESPONSE TO 40 CFR 264 AND 265, SUBPART H TO AMOUNTS CONTAINED IN THE FINANCIAL STATEMENTS

Line number in CFO's Letter		Per Financial Statements	Reconciling Items	Per CFO's Letter
2	Total current liabilities	X		
	Long-term debt	X		
	Deferred income taxes	X		
		XX		
	Accrued post-closure costs included in current liabilities		X	
	Total liabilities (less accrued post-closure costs)			X
3	Net Worth	XX		
	Less: Cost in excess of value of tangible assets acquired	X		
		XX		
	Accrued post-closure costs included in current liabilities		X	
	Tangible net worth (plus accrued post-closure costs)			XX

[balance of schedule not illustrated]

[This illustrates the form of schedule which is contemplated. Details and reconciling items will differ in a specific situation.]

VIII. ESTABLISHING FINANCIAL RESPONSIBILITY USING STATE MECHANISMS

A. INTRODUCTION

As discussed in Section F of Chapter 1, owners or operators are subject to applicable state laws or regulations pertaining to financial responsibility for closure or post-closure care in addition to the RCRA financial requirements. This chapter only applies to facilities located in states where EPA is administering financial assurance requirements.* The chapter explains how owners or operators of facilities in these states may satisfy federal requirements by demonstrating assurance using state laws.

Owners or operators may satisfy the RCRA financial assurance requirements by arranging for assurance under the authority of a state government in two ways. First, an owner or operator may provide assurance through a state-required financial mechanism equivalent to RCRA requirements. Many states are expected to adopt the federal requirements discussed in this manual or equivalent rules; in those cases, satisfaction of state requirements may be used to demonstrate compliance with RCRA requirements. Second, a state government or state fund may assume legal or financial responsibility for all or part of the closure and/or post-closure care of a facility. Such an assumption, similarly, may satisfy all or a part of the RCRA financial requirements; the specific terms and applicability of the state assumption will determine how much of the RCRA responsibility remains, if any.

Pertinent EPA regulations are listed below:

EXHIBIT VIII-1

RCRA STATE MECHANISM REGULATIONS

Topic	Interim Status	Permitted Facilities
State-Required Mechanisms	40 CFR 265.149	40 CFR 264.149
State Assumption of Responsibility	40 CFR 265.150	40 CFR 264.150

Source: Title 40, Code of Federal Regulations (CFR).

---

* EPA interim status financial assurance regulations (40 CFR 265) do not apply in states that have received PHASE I interim authorization, although RCRA standards (40 CFR 264) must be satisfied to receive a RCRA permit. States with PHASE II interim authorization administer their own financial requirements for both interim status and permitted facilities. See Chapter 1, Section F for a discussion of the applicability of federal and state requirements.

B. REQUIREMENTS FOR USING STATE MECHANISMS AND STATE ASSUMPTIONS OF RESPONSIBILITY TO SATISFY RCRA REQUIREMENTS

This section outlines the requirements for using state mechanisms to satisfy federal rules and the responsibilities of owners or operators. Included as Attachment VIII-1 is a checklist summarizing the requirements for owners or operators.

1. Satisfying State Requirements. Owners or operators must initially identify what state financial requirements apply and whether or not the state itself assumes responsibility for closure or post-closure care. State financial requirements may not be identical to RCRA requirements, although the allowable mechanisms typically include trust funds and bonds. Other states may have different requirements, as well as assumptions of closure or post-closure responsibility through funds or other provisions. (See Exhibit VIII-2.) The characterization of state laws and regulations included in Exhibit VIII-2 represents the opinions of ICF Incorporated and are not official EPA determinations of equivalence or acceptability.

Because state laws and regulations are still being developed or promulgated, it is strongly suggested that owners and operators check with the appropriate state agency for the requirements in any particular state. See Appendix B for a list of state agencies. An owner or operator whose facility is located in any state with financial requirements must satisfy both the state and federal requirements. State and federal officials encourage early and frequent contacts with agency staffs to discuss requirements. Similarly, an owner or operator will need to determine whether it is eligible for a state assumption of responsibility for closure or post-closure care.

2. Submission of Required Information. To use a state-required mechanism to satisfy RCRA requirements, the owner or operator must submit to the Regional Office evidence of the establishment of the mechanism, such as a letter from the appropriate state agency, a copy of the bond or trust fund, etc. The submission of evidence must be accompanied by a request that the State-required mechanism be considered acceptable for meeting the RCRA financial assurance requirements. (See Attachments VIII-3 through VIII-5.) The submission must include the amount of coverage assured through the state mechanism and identification information on each facility to be covered including the facility's EPA Identification Number, name, and address. Additional information may be requested by the Regional Administrator in order to determine the mechanism's acceptability.

Some state laws provide assurance of payment or performance of all or part of closure and/or post-closure responsibilities. In order to take advantage of such laws to demonstrate compliance with RCRA financial assurance requirements, the owner or operator must submit two letters: (1) a letter from the appropriate state agency describing the nature of the state's assumption of responsibility, together with (2) a letter requesting that the state's assumption of responsibility be considered acceptable for fulfilling

EXHIBIT VIII-2

STATE FINANCIAL REQUIREMENTS AND ASSUMPTIONS OF RESPONSIBILITY IN STATES WITHOUT INTERIM AUTHORIZATION AS OF MAY 10, 1982

	Has Financial Requirements	Provides Assumption of Responsibility
Alaska		
Colorado	3/	
District of Columbia	*	
Florida	1/	*
Hawaii		
Idaho		
Illinois	*	
Indiana	*	
Michigan	*	*
Minnesota	* 2/	
Missouri	*	
Nebraska	*	
Nevada	3/	
New Jersey	*	
New Mexico	1/	
New York	*	
Ohio	*	*
Puerto Rico	* 2/	
South Dakota		
Virgin Islands	*	
Washington	*	
West Virginia	3/	
Wyoming		

---

* State has some provision for the item in question.

1/ Requirements have been proposed but not yet adopted.

2/ Some financial assurance mechanism is required but the nature of the mechanism has not been specified.

3/ No regulations have yet been issued but some mechanism is required by state statute.

the RCRA financial assurance requirements. (See Attachments VIII-3 through VIII-5.) The letter from the state must include, or have attached, the following information: the facility's EPA Identification Number, name, address, and the amount of funds for closure or post-closure care guaranteed by the state. The owner or operator may be required to submit additional information requested by the Regional Administrator.

3. Satisfying Federal Requirements. The owner or operator may need to combine the State mechanism or guarantee with RCRA assurance mechanisms in order to provide complete coverage of the estimated closure and/or post-closure costs. For example, if a state fund or mechanism for post-closure only provides for fifteen years of care, it may need to be supplemented to provide for the full thirty-year RCRA post-closure period. A state fund assuming all responsibility for post-closure care beginning 20 years after closure would need to be supplemented by some mechanism assuring the first 20 years of post-closure care as well as by a mechanism assuring closure itself. The owner or operator has the option of either increasing the amount of funds available through the state-required mechanism or using additional RCRA financial mechanisms; only the latter choice will usually be available where a state fund assuming responsibility for post-closure is involved. If a combination of mechanisms is required, the owner or operator should follow the procedures for approval of combinations of RCRA mechanisms (discussed in Section B.2 of Chapter II). The total amount of funds available through the State and Federal mechanisms must at least equal the amount required under RCRA.

4. Maintaining Coverage. Owners or operators have a continuing responsibility to maintain adequate financial assurance. Thus, whenever closure or post-closure plans change, or when making annual adjustments to cost estimates for inflation, owners or operators must provide increased coverage if revised cost estimates exceed the amount of financial responsibility previously assured. Procedures for doing this will vary with the type of mechanism being used; owners or operators should consult the other chapters in this manual for details.

PERMITTED FACILITIES

To receive a RCRA permit, new and existing facilities must satisfy RCRA financial requirements for permitted facilities. If the facility is located in a state without interim authorization or with Phase I authorization only, financial assurance must be demonstrated to the appropriate Regional Administrator as described in the other chapters of this manual. State-required mechanisms or assumptions of responsibility may be used to fulfill RCRA requirements in whole or part as discussed previously. The main point to remember is that unless the facility is located in a state with Phase II interim authorization (see Exhibit I-1), it must satisfy RCRA standards to receive a RCRA permit and may comply by using state-required mechanisms or state assumptions of responsibility, if any.

C. REGIONAL OFFICE RESPONSIBILITIES

This section presents the responsibilities for Regional Administrators in reviewing state mechanisms for equivalency. A summary checklist is provided as Attachment VIII-2.

1. Evaluating Equivalency. The Regional Administrator must determine whether the state mechanism or assumption of responsibility provides financial assurance at least equivalent to the RCRA financial mechanisms. Equivalency should be evaluated principally in terms of two criteria:

(1) Certainty of the availability of funds for the required closure or post-closure care activities. For example, the state mechanism must demonstrate a minimal risk of defaulting or lapsing due to bankruptcy, change in ownership, or cancellation of guarantee, without the provision of alternate assurance.

(2) The amount of funds that will be made available. The owner or operator must demonstrate that the state mechanism will assure payment of estimated closure and/or post-closure costs, including future cost increases due to inflation or changes in the closure and/or post-closure plan.

Regional Administrators must evaluate state mechanisms and compare them to the allowable federal mechanisms principally on the basis of the two criteria of certainty and amount of funds. This could be a very complex task, and the Regional Administrator must be careful to consider many factors. These factors include:

- Qualifications required of participating financial institutions;
- Provision for increases in amount of financial assurance due to inflation or changes in plans;
- Time periods and closure and post-closure activities covered by the state mechanism;
- The amount of funds assured as compared to the cost estimates;
- Provision for future contingencies, including bankruptcy, cancellation, or changing mechanisms; and
- The future taxation and budgetary constraints that could affect a state's ability to assure future payment of closure and/or post-closure costs.

In general, Regional Offices should first analyze the state mechanism itself for adequacy before reviewing the amount of coverage offered. State financial assurance mechanisms typically include trust funds, bonds, letters of credit, and, in some cases, financial tests. This means that Regional Offices can use federal requirements as a benchmark for evaluating these instruments. In reviewing the components of a mechanism, Regional Offices should distinguish requirements that are stricter than the RCRA rules from requirements that are more lax. For example, Wisconsin places strict limits on the type of investments allowed for trust funds. Unless these restrictions prevent the accumulation of reasonable returns, the mechanism should be qualified to satisfy RCRA requirements. Where states have adopted the federal requirements by reference, detailed evaluation will not be necessary.

Regional Offices should carefully review state financial tests against federal financial test criteria because this mechanism does not involve the advance financing of a fund for later use (e.g., trust fund or insurance contract), the dedication of a line of credit, nor the underwriting of the risk of failure to satisfy requirements (e.g., surety bond, insurance).

The checklists provided throughout this manual may be used for evaluating equivalency. Questions such as the following should be asked:

(1) Must the financial institution or corporate parent be adequately qualified? Are insurers required to be licensed? Must surety companies be state-approved?

(2) What circumstances will allow the state or EPA to collect a corporate parent guarantee? Or draw on funds held in trust? Or pursuant to a letter of credit? Are insurance contracts cancellable if the owner or operator is found in violation of performance standards unrelated to financial requirements?

(3) Could cancellation of a third-party guarantee become effective before the state or EPA could legally collect funds for closure and post-closure? Will the original guarantor honor the commitment and provide the necessary funds if the owner or operator is unable to find another financial responsibility mechanism satisfactory to the Regional Administrator?

Regional Offices may wish to consult with EPA Headquarters to discuss questions and options for evaluating equivalency.

State assumptions of responsibility may be more difficult to review in the absence of federal benchmarks for comparison. Regional Offices should review exactly which activities are covered by such an assumption (e.g., closure, post-closure care, groundwater monitoring, security systems). Most states providing for assumption of responsibility usually limit this to post-closure care, commencing either immediately after closure or following a term of years. Regional Offices should not attempt to evaluate the future adequacy of state funds but may ask to review any such studies prepared by the responsible state agency.

The Regional Administrator must also determine which required closure or post-closure activities are covered neither by the state mechanism nor by the state assumption (if any) in order to identify additional assurances needed to satisfy federal requirements. Similarly, the dollar amount of coverage must be reviewed to determine equivalency. Because estimates of the cost of closure and/or post-closure care may vary, Regional Administrators should employ rough guidelines for assessing whether the dollar amount of coverage falls into the acceptable range, for facilities of the type covered. If the amount provided is clearly inadequate, the owner or operator should be required either to increase coverage afforded by the state mechanisms or establish an additional federal mechanism.

2. Reviewing Submissions. The Regional Administrator should review the information submitted by the owner or operator to verify that all the required information is included. In addition to the facility's EPA Identification Number, name, address, and the amount of funds assured, the following should be included:

- evidence of the establishment of a state-required mechanism, such as a copy of the trust agreement, surety bond, letter of credit, insurance contract, or corporate parent guarantee with the state listed as a beneficiary, including all required attachments, such as Attachment A for the trust fund, acknowledgements, power of attorney, etc.;

- a letter from the state describing the nature of the state's assumption of responsibility, if any, signed by an appropriate state-agency official; and

- a cover letter requesting that the state mechanism and/or assumption of responsibility be considered acceptable for meeting, in whole or part, RCRA financial requirements.

Three sample owner or operator request letters are included as attachments. They represent situations where:

(1) a combination of a state-required mechanism and assumption of responsibility are requested to fully satisfy RCRA requirements (Attachment VIII-3);

(2) state-required mechanisms equivalent to RCRA assurances are requested to fully satisfy RCRA requirements (Attachment VIII-4); and

(3) a state-required mechanism not equivalent to RCRA assurances is requested to fully or partially satisfy RCRA requirements (Attachment VIII-5).

Resort to state law as a means of fulfilling applicable RCRA requirements will fall into one of these three typical situations.

3. Verifying Conformity to Requirements. Regional Administrators must advise owners or operators concerning the acceptability of state mechanisms and assumptions of responsibility. Pending this determination, the owner or operator will be deemed to be in compliance with the applicable RCRA financial assurance requirements. Any additional coverage needed for the assurance to be at least equivalent to RCRA requirements should be specified. Additional assurances may be provided by increasing the amounts available under state mechanisms or using additional mechanisms meeting RCRA requirements.

4. Ensuring Maintenance of Coverage. Regional Offices should determine whether state mechanisms provide for later adjustments in coverage consistent with federal requirements. If not, the owner or operator will have to satisfy its ongoing responsibility by using additional federal mechanisms. Use of those mechanisms for maintaining coverage is discussed in the preceding chapters of this manual. In addition, should the state receive interim authorization to administer its own hazardous waste management program, the Regional Administrator should consent to the termination of financial assurance mechanisms only when no lapse in coverage will result.

PERMITTED FACILITIES

Owner or operators may use state-required mechanisms or state assumptions of responsibility to satisfy federal financial assurance standards for permitted facilities in states which have not received applicable Phase II interim authorization. The guidance in this chapter applies to such situations.

D. SOURCES OF FURTHER INFORMATION

Because many state laws and regulations are currently in a state of flux, owners or operators are advised to contact the appropriate state agency to determine applicable requirements. State agency contacts are listed in Appendix B. EPA Regional Office contacts can also advise regarding the authorization status of state programs (see Appendix A).

ATTACHMENT VIII-1

RCRA STATE MECHANISMS CHECKLIST FOR OWNERS OR OPERATORS

Paragraph Number *

(1) ___ Identify pertinent state laws and requirements which can be used to satisfy RCRA regulations.

(2) ___ Submit:

- ___ Letter requesting consideration of state mechanism and/or assumption of responsibility to apply for RCRA requirements
- ___ Signed copies of financial instruments (with associated attachments, acknowledgements, or certificates) naming state agency as beneficiary
- ___ Letter from state agency acknowledging completion of state requirements, if available
- ___ Letter from state agency describing the nature of the State's assumption of responsibility
- ___ EPA Identification Number and information on each facility, including amount of funds assured for closure or post-closure

(3) ___ Satisfy federal requirements by providing additional assurances as necessary.

(4) ___ Maintain coverage throughout operating life of facility, including

- ___ Assurance of cost increases due to plan changes
- ___ Assurance of cost increases due to annual inflation adjustments
- ___ Change of mechanisms as required to maintain assurance in the event of incapacity, disallowance, or ineligibility of financial institution or parent guarantor

---

* Numbers correspond to paragraphs in Section B.

ATTACHMENT VIII-2

RCRA STATE MECHANISMS CHECKLIST FOR REGIONAL OFFICES

The Regional Administrator should ensure that:

Paragraph Number *

(1) ___ Equivalency of State Mechanisms or Assumptions of Responsibility is determined principally on the basis of:

" ___ Certainty of Availability of Funds, including:

- ___ Qualifications for financial institutions, parent guarantors, or financial test
- ___ Irrevocability of trust fund and letter of credit
- ___ Adequate notice prior to termination, cancellation, or non-renewal of financial mechanism and provisions for obtaining alternate assurance or drawing upon mechanisms prior to termination, cancellation, or non-renewal
- ___ Requirements of financial test (e.g., assets, ratios)
- ___ Provisions for maintenance of assurance in the event of bankruptcy of parent guarantor or financial institution, incapacity, transfer of ownership or operation, change in mechanism
- ___ Source of funds to be used by states assuming responsibility for closure or post-closure care

" ___ Amount of Funds Available, including:

- ___ Closure or post-closure activities covered
- ___ Time period covered
- ___ Amount of funds provided compared to cost estimates

---

* Numbers correspond to paragraphs in Section B.

ATTACHMENT VIII-2 (continued)

RCRA STATE MECHANISMS CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *

___ Provisions for increases in coverage due to inflation or changes in closure or post-closure plans

___ Amount of funds available through state accounts or revolving funds

___ Additional assurances needed

(2) ___ The initial submission is complete, including:

___ Owner or operator request letter

___ Evidence of establishment of state mechanism, such as copies of executed (i.e., signed) financial instruments, letter of acknowledgment from state agency, etc.

___ Identifying information for covered facilities and amount of coverage

___ Copy of letter from state agency describing assumption of responsibility

___ The owner or operator is notified of the equivalency determination.

(3) ___ The amount of funds available at least equals the amount required by RCRA standards

___ State mechanisms and/or assurance completely fulfill RCRA requirements

___ Assurance provided by additional mechanisms is consistent with RCRA requirements

---

* Numbers correspond to paragraphs in Section 3.

ATTACHMENT VIII-2 (continued)

RCRA STATE MECHANISMS CHECKLIST FOR REGIONAL OFFICES

Paragraph Number *

___ Amount of funds available under state mechanisms is increased as required

(4) ___ Coverage is maintained

___ State mechanisms provide for maintenance of assurance and owner or operator is in compliance

___ Owner or operator uses additional mechanism to provide for adjustments to financial assurance

___ There is no lapse in coverage if the State receives interim authorization

---

* Numbers correspond to paragraphs in Section 3.

ATTACHMENT VIII-3

SAMPLE OWNER OR OPERATOR REQUEST LETTER (I)

HazWaste Corp.
Address
Date

EPA Regional Administrator
U.S. EPA Region ____
Street Address
City, State, Zip Code

Dear Sir/Madam:

This letter is submitted to request that RCRA financial requirements (40 CFR 265) be deemed satisfied, in whole or part, by state mechanisms and/or assumptions of responsibility with which HazWaste Corp. is in compliance.

HazWaste Corp. owns and operates three (3) facilities in State X whose EPA Identification Numbers and addresses are as follows:

[Insert identifying information]

State X requires financial responsibility demonstrations to cover the costs of closure and up to 15 years of post-closure care. See Rules 26.02 and 26.07 of the State X Department of Environmental Protection. HazWaste Corp. has established the required trust funds, as evidenced by the following documents which are attached:

(A) Copy of trust agreement and Schedule A (Attachment A) and

(B) Letter from State X Department of Environmental Protection acknowledging satisfaction of state requirements (Attachment B).

In addition, State X has established a Perpetual Care and Monitoring Fund to provide for sites which have been closed for fifteen years. See Rules 30.50 through 30.70. We request that the state assumption of post-closure care responsibility be deemed to partially satisfy federal RCRA requirements. We have attached a letter from the state agency acknowledging the inclusion of our facilities under the state assumption. (See Attachment C).

ATTACHMENT VIII-3 (continued)

SAMPLE OWNER OR OPERATOR REQUEST LETTER (I)

In conclusion, we request that the combination of our state-required financial responsibility demonstrations and the state assumption of post-closure care be deemed to completely satisfy federal RCRA requirements. We will be pleased to provide any further information you may need.

Sincerely,

____
President, HazWaste Corp.

Attachments
  A. Trust Fund Agreement (Closure and Post-Closure)
  B. State agency acknowledgement
  C. State assumption of responsibility

ATTACHMENT VIII-4

SAMPLE OWNER OR OPERATOR REQUEST LETTER (II)

Waste Control Inc.
Address
Date

EPA Regional Administrator
U.S. EPA Region ____
Street Address
City, State, Zip Code

Dear Sir/Madam:

This letter is submitted to request that RCRA financial requirements be deemed satisfied by state rules with which Waste Control Inc. has complied.

Waste Control Inc. owns and operates one (1) facility in State Y located at [insert address] assigned EPA Identification Number ________________.

State Y has adopted by reference the RCRA financial requirements of 40 CFR 264 and 265, as amended. See Rule 70Y(1) of the State Department of Natural Resources. Waste Control Inc. has secured an irrevocable letter of credit to assure the availability of funds for both closure and post-closure, a copy of which is attached. The State Y [insert appropriate agency] has accepted this letter of credit as fulfilling the requirements of Rule 70Y(1).

Accordingly, we request that the establishment of this financial assurance mechanism be determined acceptable for meeting the requirements of 40 CFR 265. Further information, if needed, will be supplied at your request.

Thank you,

____
Comptroller, Waste Control Inc.

Attachments
- A. Irrevocable Letter of Credit (copy)
- B. State agency acknowledgement

ATTACHMENT VIII-4

SAMPLE OWNER OR OPERATOR REQUEST LETTER (III)

Synthetic Chemical Industries
Address
Date

EPA Regional Administrator
U.S. EPA Region ____
Street Address
City, State, Zip Code

Subject: Financial Requirements

Synthetic Chemical Industries ("SCI") owns two hazardous waste facilities in the State of Z, both of which are in interim status and subject to the financial requirements of 40 CFR 265. The EPA Identification Numbers and addresses are:

[Insert identifying information]

SCI has complied with Section 394B of the Public Health Code of State Z by posting two bonds to assure the closing and covering of our landfills in a manner which prevents erosion, health and safety hazards, nuisances, and pollution. As required by state law, these bonds must be in the amount of $1,000 per acre of land for which a State Z permit is required, but in no event for less than $25,000. SCI has posted bonds of $25,000 and $42,000, respectively, for the two sites identified above. Pursuant to state law, liability for the bond is to extend until five (5) years after the closure of the landfill. This obligation is binding on the heirs, representatives, successors, and assignees of SCI.

SCI requests that this State-required mechanism be determined acceptable for meeting the financial requirements of 40 CFR 265, in whole or in part. Pending this determination, SCI understands that it will be deemed to be in compliance with such requirements (40 CFR 265.149(b)). SCI intends to provide whatever additional assurances are determined necessary.

ATTACHMENT VIII-4 (continued)

SAMPLE OWNER OR OPERATOR REQUEST LETTER (III)

We have enclosed copies of our closure and post-closure plans, facsimiles of the above-referenced bonds, and a copy of the letter of acknowledgement receive by SCI from State Z. SCI will provide such additional information as may be deemed necessary to make this determination.

Sincerely,

General Counsel, SCI

Attachments

GLOSSARY OF TERMS

Term	Definition
ACCOUNT PARTY	One who purchases or arranges for a letter of credit from a financial institution.
ACCOUNTANTS OPINION	See REPORT ON EXAMINATION.
ACKNOWLEDGE, ACKNOWLEDGEMENT (OF AN INSTRUMENT)	Formal declaration before an authorized official such as a notary, by the person who executed the instrument, that it is his free act and deed.
ADJUSTED COST ESTIMATE	A cost estimate which has been updated using the appropriate inflation factor within 30 days of the anniversary date on which the first cost estimate was prepared.
ADVERSE OPINION	Statement by an accountant that the financial statements of the firm do not present fairly the financial condition of the firm in conformity with generally accepted accounting principles. This type of opinion will cause the EPA to disallow the use of the financial test for the firm.
ALIEN INSURER	An insurance company incorporated under the laws of a foreign country.
AMORTIZATION	Gradually reducing the accounting or "book" value of a fixed asset by allocating part of the cost of the asset over time to individual accounting periods. The term is used to refer to assets whose life is limited but which do not physically wear out. Examples include copyrights, patents, and leases. See DEPRECIATION.

Term	Definition
ASSET	All existing and all probable future economic benefits obtained or controlled by a particular entity. Any right or physical property that is owned and has a monetary value.
ASSIGNMENT	A transfer by one party to a contract of some or all of the rights of the contract to a third party. In this case, the contract is the liability insurance policy.
AUDIT	Systematic inspection of accounting records involving analyses, tests, and confirmations.
AUTOMATIC EXTENSION, AUTOMATIC RENEWAL	Continuation of an insurance policy or letter of credit without the need for renegotiation.
BENEFICIARY	One for whose benefit a trust or letter of credit is established.
BOND RATING	An assessment of the credit-worthiness of an obligor with respect to a specific debt obligation (bond). Ratings take the form of letters--e.g. AA, A, B, etc. For purposes of these regulations, Moody's and Standard & Poor's are the only two acceptable bond-rating corporations. See also INVESTMENT GRADE.
CAPTIVE INSURER	An insurance company set up by a company or group of companies to insure their own risks, or risks common to the group.
CASH FLOW	In accounting, a company's net income (sales minus operating expenses) plus allowances for depreciation, depletion, and amortization. Represents the funds available as working capital and for expansion.

corrected page

Term	Definition
CERTIFIED PUBLIC ACCOUNTANT (CPA)	An accountant with a special state license indicating that he or she meets certain requirements for the public practice of accounting. Although requirements vary from state to state, all must pass a rigorous examination administered by the American Institute of Certified Public Accountants.
CHIEF FINANCIAL OFFICER	The principal financial officer required to sign SEC Form 10-K's or the equivalent.
CIRCULAR 570	Circular of the U.S. Department of the Treasury, published annually in the Federal Register on July 1. The surety company issuing the surety bond must be among those listed as acceptable sureties on federal bonds in Circular 570.
COLLATERAL	A tangible security or property, usually readily convertible into cash, that is deposited with a creditor to guarantee payment of an obligation. Either the property itself or a document or title to it is held by the creditor until the loan is repaid.
COMMON TRUST FUND	A trust fund into which funds from several individual trusts may be placed.
CORPORATE GUARANTEE	A guarantee by the owner or operator's parent corporation that it will meet all financial assurance obligations specified in the regulations.
COSURETY	Two or more sureties who share one surety bond obligation.
CLOSURE OR POST-CLOSURE INSURANCE	A type of insurance coverage that provides funds for final closure or post-closure care whenever required.

corrected page

Term	Definition
CURRENT ASSETS	Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is less than one year.
CURRENT COST ESTIMATE	The most recent cost estimate which includes any revisions due to changes in plan or inflation adjustments.
CURRENT LIABILITIES	Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities or those expected to be satisfied within a relatively short period of time, usually one year.
DEPLETION	In accounting, an allowance made for the shrinkage or exhaustion of a natural resource.
DEPRECIATION	In accounting, the method of allocating part of the cost of an asset that will be used up over time to individual accounting periods. The number of accounting periods does not necessarily correspond to the actual life of the asset, i.e., a building that lasts 40 years may be depreciated over 10 years. See AMORTIZATION.
DISCLAIMER OF OPINION	Statement that the auditor does not express an opinion on the financial statements of the firm. This statement will cause EPA to disallow the use of the financial test for the firm.

Term	Definition
EXCESS OR SURPLUS LINES	The designation that a state gives to insurance companies which are not licensed to transact business in that state. Because such companies, also known as "non-admitted insurers," cannot be regulated, states include specific regulations for agents and brokers of excess or surplus lines in the broker or agent's license. The state of New York, for example, requires a broker or agent to submit declamations from five licensed (or admitted) insurers stating that the service(s) provided by a particular excess or surplus line cannot be obtained from their firm. Most states also maintain either "black lists" of non-admitted insurers which a broker or agent cannot take on as an excess or surplus line or "white lists" of eligible providers. The Non-Admitted Insurers Information Office (NAIIO) of the National Association of Insurance Commissioners (NAIC) publishes its own "Non-Admitted Insurer's Quarterly List."
EXISTING FACILITY	A facility that was in operation, or for which construction commenced on or before November 19, 1980. A facility has commenced construction if the owner or operator has obtained Federal, state, and local approval to begin construction; and physical construction has begun, or contracts for physical construction have been signed.
FACE AMOUNT OF POLICY	Face value of an insurance policy; the total amount the insurer is obligated to pay under the policy.
FACE VALUE	The value of a security, insurance policy, or letter of credit, expressed as a specific sum of money, which is printed, stamped, or otherwise marked on its face. The face value of a bond is usually the amount the issuer promises to pay at maturity.

Term	Definition
FIDUCIARY	A person whose duty is to act on behalf of another or to protect the interests of another. A trustee is a fiduciary.
FINAL AUTHORIZATION	Approval by EPA of a state program which has met the requirements of §3006(b) of RCRA and the applicable requirements of Part 123, Subparts A and B.
FINANCIAL GUARANTEE BONDS	A type of surety bond under which the surety agrees to pay the penal sum of the bond if the owner or operator fails to fulfill his closure and/or post-closure obligations. Financial guarantee bonds may be used by facilities with interim or general status.
FINANCIAL RATINGS OF INSURERS	Similar to a bond rating, an assessment of the credit-worthiness of an insurance company with respect to its future obligations.
FINANCIAL STATEMENTS	Formal reports of the status of accounts at a particular time, prepared to show the operating results and financial condition of the firm. The statements include the balance sheet, income statement, and statement of changes in financial position.
FINANCIAL TEST	Criteria specified in regulations which an owner, operator, or corporate parent must pass to establish financial assurance.
FORM 10-K, FORM 10-Q	A type of report that U.S. corporations file with the Securities and Exchange Commission. It frequently contains more information than the annual report distributed to stockholders. The 10-K is submitted annually; the 10-Q quarterly.

Term	Definition
GNP DEFLATOR	Weighted price index which reflects the rate of inflation. It is derived by dividing current-dollar Gross National Product (GNP) by constant-dollar GNP. See also INFLATION FACTOR.
GRANTOR	One who creates a trust. Also called a trustor.
INFLATION FACTOR	The price index used to update cost estimates for closure and post-closure care, in order to account for inflation. The index used is the GNP deflator.
INTERIM AUTHORIZATION	Approval by EPA of a state hazardous waste program which has met the requirements of §3006(c) of RCRA and applicable requirements of Part 123, Subpart F. See also PHASE I and PHASE II.
INTERIM STATUS FACILITIES	Existing hazardous waste management facilities for which notification under RCRA Section 3010 and Part A of the RCRA permit application have been submitted. Facility owners and operators with interim status are treated as having been issued a permit until EPA or a State with interim authorization for Phase II or final authorization under Part 123 makes a final determination on the permit application. Facility owners and operators with interim status are not relieved from complying with other State requirements.
INVESTMENT GRADE	A bond or other debt instrument with a rating from Moody's of Aaa, Aa, A, or Baa; or a rating from Standard & Poor's of AAA, AA, A, or BBB.

Term	Definition
IRREVOCABLE	That which cannot be revoked or recalled. All RCRA trusts must be irrevocable. A RCRA irrevocable letter of credit cannot be cancelled unless alternate assurance is substituted or the account party is released from financial requirements.
ISSUER	The party who issues an insurance policy, letter of credit, or surety bond.
JOINTLY AND SEVERALLY RESPONSIBLE	A liability is said to be joint and several when the creditor may sue one or more of the parties to such liability separately, or all of them together at his option. Any one of these parties may be liable for the entire amount.
LETTER OF CREDIT	A letter or instrument authorizing that credit up to a particular amount be extended to the person named therein.
LIABILITIES	Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.
MOODY'S	One of the two bond-rating agencies acceptable for purposes of these regulations. Address: Moody's Investors Service, Inc., 99 Church Street, New York, New York 10007.
NET INCOME	The difference between total sales and total costs of goods sold plus expenses over the fiscal year.
NET WORKING CAPITAL	Current assets minus current liabilities.
NET WORTH	Total assets minus total liabilities and is equivalent to owner's equity.

Term	Definition
NOMINAL SUM	A small amount of money, such as $1.00 or $10.00, with which a standby trust fund is often started.
OBLIGEE	One in favor of whom the surety is obliged in a surety bond. In RCRA surety bonds, EPA is the obligee.
ORIGINALLY SIGNED DUPLICATE	A copy of a document with an original signature.
PARENT CORPORATION	A corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.
PARENT GUARANTOR	A parent corporation which provides a corporate guarantee.
PAY-IN PERIOD	Period of time during which the owner or operator must make payments into the trust fund. For facilities with interim status, the pay-in period is 20 years or the remaining operating life of the facility as estimated in the closure plan, whichever is shorter. For facilities with general status, the pay-in period is the term of the initial RCRA permit or the remaining operating life of the facility as estimated in the closure plan, whichever is shorter.
PENAL SUM	An amount agreed upon in a bond, to be forfeited if the condition of the bond is not fulfilled. It represents the maximum liability of the surety.
PERFORMANCE BONDS	A type of surety bond under which the surety agrees to either pay the penal sum of the bond or perform the required actions if the owner or operator fails to fulfill his obligation. Performance bonds may only be used for facilities with general status.

Term	Definition
PERMITTED FACILITIES	Facilities which have demonstrated compliance with RCRA standards and have received permits.
PHASE I INTERIM AUTHORIZATION	The first phase of interim authorization of state programs by EPA. It allows states to administer a hazardous waste program in lieu of and corresponding to that portion of the federal program which covers identification and listing of hazardous waste, generators and transporters of hazardous waste, and establishes preliminary standards for hazardous waste treatment, storage, and disposal facilities. States need not have established financial assurance requirements to receive PHASE I interim authorization.
PHASE II INTERIM AUTHORIZATION	The second phase of interim authorization of state programs by EPA. It allows states to establish a permit program for hazardous waste treatment, storage, and disposal facilities in lieu of and corresponding to the federal hazardous waste permit program, including financial assurance requirements for both interim status and permitted facilities. Phase II interim authorization may be granted for treatment and storage facilities only; Phase II authorization is not currently available for disposal operations.
POWER OF ATTORNEY	A written authorization authorizing another to act as one's agent or attorney.
PREMIUM PAYMENTS	The periodic payments of money which the policy-holder agrees to pay the insurer for an insurance policy.
PRINCIPAL	One who establishes a surety bond. In RCRA surety bonds, the owner or operator is the principal.

Term	Definition
PRUDENT MAN STANDARD	An investment rule according to which a trustee may invest in a security only if it is one that a "prudent man" of discretion and intelligence, seeking reasonable income and preservation of capital, would buy.
QUALIFIED OPINION	Statement by an accountant that the financial statements of a firm present fairly the financial condition of the firm, subject to certain conditions, or except for certain limitations.
REINSURANCE	A contract between an insurer or surety and another party, called the reinsurer, in which the reinsurer agrees to protect (reinsure) the insurer or surety against loss on some of its insurance. Reinsurance allows an insurer or surety to share the risk among more parties and issue more policies or bonds within its allowable limits.
REPORT ON EXAMINATION	The independent certified public account's report on the financial statements, support schedules, and footnotes. Often referred to as the accountant's report or the auditor's opinion. The report on examination usually contains two paragraphs -- a scope paragraph and an opinion paragraph. The scope paragraph indicates the financial presentations covered by the opinion and affirms that generally accepted auditing standards and practices have been followed by the auditors. The opinion paragraph contains the accountant's opinion of the financial statements, schedules and footnotes. The opinion can be unqualified, qualified, or adverse; or there can be a disclaimer of opinion. See QUALIFIED OPINION, UNQUALIFIED OPINION, ADVERSE OPINION, and DISCLAIMER OF OPINION.

Term	Definition
RIDER	In insurance, a form adding special provisions to a policy. For RCRA bonds, an optional rider allows the owner or operator to increase the penal sum by up to 20 percent per year without renegotiating the bond.
SECURITIES OR OTHER OBLIGATIONS	Written instruments showing evidence of indebtedness of a business or government or equity ownership of a business. Bonds are securities which bear interest.
SHARE THE RISK	An action in which a surety company or insurance company enters into an agreement with other companies to share a potential obligation. Also called a co-surety agreement, co-insurance, or re-insurance.
SPECIAL REPORT	The independent certified public accountant's confirmation that the financial data in the letter from the Chief Financial Officer were derived from the annual report and need no adjustment.
STANDARD & POOR'S	One of the two bond-rating agencies acceptable for purposes of these regulations. Address: Standard & Poor's Corp., 25 Broadway, New York, New York 10004 or P.O. Box 992, New York, New York 10275.
STANDBY TRUST FUND	A trust fund which must be established by an owner or operator who obtains a RCRA letter of credit or surety bond. The institution issuing the letter of credit or surety bond will deposit into the standby trust fund any drawings by the Regional Administrator on the credit or bond.
SURETY	A person who undertakes to pay money or do any other act in the event that another party fails therein.

Term	Definition
SURETY BOND	A contract in which a party called the "surety", guarantees that certan obligations, such as the payment of money, will be paid if another party fails to perform his obligations.
TANGIBLE NET WORTH	Net worth minus intangible assets, such as goodwill and rights to patents or royalties.
TOTAL LIABILITIES	Total debts owed by a business or individual including all liabilities.
TRUST	A right of property, real or personal, held by one party for the benefit of another. The grantor or trustor creates the trust; the trustee holds the property held in trust; and the beneficiary is the party for whose benefit the trust is created.
TRUST AGREEMENT	The document which establishes a trust.
TRUST FUND	A trust fund establishes a reserve of capital to pay claims for the completion of closure and/or post-closure obligations.
TRUSTEE	The person appointed, or required by law, to execute a trust, i.e., to hold and protect trust assets and invest them according to the "prudent-man standard" and the terms of the trust agreement for the benefit of the beneficiary.
TRUSTOR	One who creates a trust by depositing assets into it. Also called a grantor.
UNDERWRITE (A RISK)	To insure life or property; to assume a risk. In insurance, a person or company undertakes all or part of the risk against theft, fire, death, or whatever the policy stipulates, in exchange for a payment called a premium.

Term	Definition
UNDERWRITING LIMITATION	The maximum amount allowed by law for which a surety can issue a surety bond. The limit may be exceeded if the surety "shares the risk" of the obligation, and then still may not exceed the combined underwriting limitation of those companies.
UNQUALIFIED OPINION	Statement by an accountant that the financial statements of a firm present fairly the financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles consistently applied.

A-1

APPENDIX A

FEDERAL REGULATORY AUTHORITIES

Page

APPENDIX A-1: EPA FINANCIAL ASSURANCE REGIONAL OFFICE CONTACTS A-1

APPENDIX A-2: FEDERAL REGULATORY AUTHORITIES FOR FINANCIAL INSTITUTIONS AND MARKETS A-3

APPENDIX A-1a

For information on implementation of the financial assurance regulations, contact the EPA regional offices below:

Region I (Connecticut, Maine, Massachusetts, New Hampshire,
Rhode Island, Vermont)

Gary Gosbee
Waste Management Branch
John F. Kennedy Building
Boston, Massachusetts 02203
(617) 223-1591

Region II (New Jersey, New York, Puerto Rico, U.S. Virgin Islands)

Helen S. Beggun, Chief
Grants Administration Branch
26 Federal Plaza
New York, New York 10007
(212) 264-9860

Region III (Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia, West Virginia)

Anthony Donatoni
Hazardous Materials Branch
6th and Walnut Streets
Philadelphia, Pennsylvania 19106
(215) 597-7937

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi,
North Carolina, South Carolina, Tennessee)

Micky Hartnett
Residuals Management Branch
345 Courtland Street, N.E.
Atlanta, Georgia 30308
(404) 881-3016

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio,
Wisconsin)

Thomas Golz
Waste Management Branch
230 South Dearborn Street
Chicago, Illinois 60604
(312) 886-4023

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Henry Onsgard
Attention: RCRA Financial Requirements
1201 Elm Street
First International Building
Dallas, Texas 75270
(214) 767-2630

Region VII (Iowa, Kansas, Missouri, Nebraska)

Robert L. Morby, Chief
Hazardous Materials Branch
324 East 11th Street
Kansas City, Missouri 64106
(816) 374-3307

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Carol Lee
Waste Management Branch
1860 Lincoln Street
Denver, Colorado 80203
(303) 837-6258

Region IX (American Samoa, Arizona, California, Commonwealth of the Northern Marianas Islands, Guam, Hawaii, Nevada)

Richard Procunier
Hazardous Materials Branch
215 Fremont Street
San Francisco, California 94105
(415) 974-8157

Region X (Alaska, Idaho, Oregon, Washington)

Kenneth D. Feigner, Chief
Waste Management Branch
1200 Sixth Avenue
Seattle, Washington 98101
(206) 442-1260

APPENDIX A-2

FEDERAL REGULATORY AUTHORITIES FOR FINANCIAL INSTITUTIONS AND FINANCIAL MARKETS

I. Regulatory Authorities for Banks

1. Comptroller of the Currency
   Department of the Treasury
   490 L'Enfant Plaza East, S.W.
   Washington, D.C. 20219
   (202) 447-1810

2. Board of Governors of the
   Federal Reserve System
   20th and Constitution Avenue, N.W.
   Washington, D.C. 20551
   (202) 452-3000

3. Federal Deposit Insurance Corporation
   550 Seventeenth Street, N.W.
   Washington, D.C. 20429
   (202) 393-8400

II. Regulatory Authorities for Savings and Loan Institutions

1. Federal Home Loan Bank Board
   1700 G Street, N.W.
   Washington, D.C. 20552
   (202) 377-6000

2. Federal Savings and Loan Insurance Corporation
   1700 G Street, N.W.
   Washington, D.C. 20552
   (202) 377-6600

III. Regulatory Authority for Credit Unions

1. National Credit Union Administration
   1776 G Street, N.W.
   Washington, D.C. 20456
   (202) 357-1050

IV. Regulatory Authority for Financial Markets

1. U.S. Securities and Exchange Commission
   500 N. Capitol Street, N.W.
   Washington, D.C. 20549
   (202) 272-2650

2. Copies of corporate financial reports may be obtained by written request (marked Attn: Public Reference) or may be obtained in person at:

   Public Reference Room
   U.S. Securities & Exchange Commission
   1100 L Street, N.W.
   Washington, D.C.
   (202) 523-5506

APPENDIX B

STATE REGULATORY AUTHORITIES
(Compiled March 1982)

Page

APPENDIX B-1: STATE AUTHORITIES WHICH REGULATE HAZARDOUS WASTE MANAGEMENT B-1

APPENDIX B-2: STATE AUTHORITIES WHICH REGULATE FINANCIAL INSTITUTIONS WHICH MAY ACT AS TRUSTEE OR ISSUE LETTERS OF CREDIT B-9

APPENDIX B-3: STATE AUTHORITIES WHICH REGULATE THE ISSUANCE OF SURETY BONDS AND INSURANCE B-20

APPENDIX B-4: STATE BOARDS OF ACCOUNTANCY B-26

APPENDIX B-1 a

STATE AUTHORITIES WHICH REGULATE HAZARDOUS WASTE MANAGEMENT

This Appendix lists the names, addresses, and telephone numbers of state officials to contact for further information about state financial assurance requirements.

Alabama

Alfred S. Chipley, Director
Division of Solid Waste & Vector Control
Environmental Health Administration
Department of Public Health
Union Bank Building, Room 1212
Montgomery, Alabama 36130
(205) 834-1303

Alaska

Thomas R. Hanna
Air & Solid Waste Management
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
(907) 465-2666

American Samoa

Pati Faiai, Executive Secretary
Environmental Quality Commission
American Samoa Government
Pago Pago, American Samoa 96799
Overseas Operator (Commercial Call
633-4116)

Arizona

Tilbaldo Canez, Bureau Chief
Bureau of Waste Control
Department of Health Services
1740 West Adams Street
Phoenix, Arizona 85007
(602) 255-1160

Arkansas

Jim Bearden, R.S., Acting Chief
Solid Waste Management Division
Department of Pollution Control
and Ecology
P.O. Box 9583
8001 National Drive
Little Rock, Arkansas 72219
(501) 562-7444

California

Dr. Harvey Collins, Chief
Environmental Health Branch
Department of Health Services
744 P Street
Sacramento, California 95814
(916) 322-2308

Colorado

Dr. James Martin, Section Chief
Solid & Hazardous Waste Section
Department of Health
4210 East 11th Avenue
Denver, Colorado 80220
(303) 320-8333

Commonwealth of the Northern Marianas Islands

Carl Goldstein
Division of Environmental Quality
Department of Public Health and
Environmental Services
Saipan, Mariana Islands 96950
Overseas Operator (Commercial Call
6984/6114)

Connecticut

Stephen Hitchcock, Director
Hazardous Waste Management Unit
Department of Environmental Protection
State Office Building
165 Capitol Avenue
Hartford, Connecticut 06115
(203) 566-5148

Pat Bowe, Chief
Hazardous Materials Management Unit
Department of Environmental Protection
State Office Building
165 Capitol Avenue
Hartford, Connecticut 06115
(203) 566-5712

Delaware

Kenneth Weiss, Supervisor
Solid Waste Management Section
Department of Natural Resources and
  Environmental Control
Edward Tatnall Building
P.O. Box 1401
Dover, Delaware 19901
(302) 736-4781

District of Columbia

James McDermott, Acting Administrator
Office of Environmental Standards
  and Quality Assurance
Department of Environmental Services
5000 Overlook Avenue, S.W.
Washington, D.C. 20032
(202) 767-8181

Florida

Robert McVety
Environmental Administrator
Solid Waste Section
Department of Environmental Regulation
Twin Towers Office Building, Room 421
2600 Blair Stone Road
Tallahassee, Florida 32301
(904) 488-0300

Florida (cont'd)

Robert Hawfield
Hazardous Waste Division
Department of Environmental
  Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301
(904) 488-0300

Georgia

Moses McCall, III, Chief
Land Protection Branch
Environmental Protection Division
Department of Natural Resources
Room 822
270 Washington Street, S.W.
Atlanta, Georgia 30334
(404) 656-2833

John Taylor, Program Manager
Industrial & Hazardous Waste
  Management Program
Land Protection Branch
Environmental Protection Division
270 Washington Street, S.W.
Atlanta, Georgia 30334
(404) 656-2833

Guam

James Branch, Deputy Administrator
EPA, Government of Guam
P.O. Box 2999
Agana, Guam 96910
Overasea Operator (Commercial Call
  646-8863)

Hawaii

Melvin Koizumi, Deputy Director
Environmental Health Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801
(808) 548-4139

Idaho

Robert Olson, Supervisor
Solid/Hazardous Materials Section
Department of Health and Welfare
State House
Boise, Idaho 83720
(208) 334-4107

Illinois

John Moore, Manager
Division of Land and Noise Pollution Control
Environmental Protection Agency
2200 Churchill Road, Room A104
Springfield, Illinois 62706
(217) 782-6760

Indiana

David Lamm, Chief
Solid Waste Management Section
Division of Sanitary Engineering
State Board of Health
1330 West Michigan Street
Room A304
Indianapolis, Indiana 46206
(317) 633-0176

Iowa

Charles Miller, Director
Air and Land Quality Division
Department of Environmental Quality
Henry A. Wallace Building
900 East Grant Street, 3rd Floor
Des Moines, Iowa 50319
(515) 281-8853

Kansas

John Paul Goetz, P.E., Chief
Hazardous Waste Management Unit
Department of Health & Environment
Forbes Field
Topeka, Kansas 66620
(913) 862-9360

Kentucky

Roger Blair, Director
Division of Hazardous Materials and Waste Management
Department of Natural Resources and Environmental Protection
1121 Louisville Road
Pineville Plaza
Frankfort, Kentucky 40601
(502) 564-6716

Louisiana

James Hutchinson, Deputy Secretary
Department of Natural Resources
P.O. Box 44396
Baton Rouge, Louisiana 70804
(504) 342-4506

Gerald Healy, Jr., Administrator
Hazardous Waste Management Division
Office of Environmental Affairs
P.O. Box 44066
Baton Rouge, Louisiana 70804
(504) 342-1227

Maine

John Brochu, Director
Bureau of Oil & Hazardous Waste Materials
Department of Environmental Protection
State House -- Station 17
Augusta, Maine 04333
(207) 289-3355

Maryland

Ronald Nelson, Director
Waste Management Administration
Office of Environmental Programs
Department of Health & Mental Hygiene
201 West Preston Street, Room 212
Baltimore, Maryland 21201
(301) 383-2771

Massachusetts

Glen Gilmore, Chief
Hazardous Waste Section
Division of Hazardous Waste
Department of Environmental Quality
Engineering
600 Washington Street
Boston, Massachusetts 02108
(617) 727-5431

Michigan

Delbert Rector, Acting Chief
Office of Hazardous Waste Management
Environmental Services Division
Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909
(517) 373-3560

David Dennis, Chief
Oil & Hazardous Materials Control
Section
Water Quality Division
Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909
(517) 373-2794

Minnesota

Dale Wikre, Director
Division of Solid & Hazardous Waste
Pollution Control Agency
1935 West Country Road, B-2
Roseville, Minnesota 55113
(612) 297-2735

Mississippi

Jack McMillan, Director
Division of Solid Waste Management
State Board of Health
P.O. Box 1700
Jackson, Mississippi 39205
(601) 982-6317

Bureau of Pollution Control
Department of Natural Resources
P.O. Box 10385
Jackson, Mississippi 39209
(601) 961-5171

Missouri

Robert Robinson, P.E., Director
Solid Waste Management Program
Department of Natural Resources
P.O. Box 1368
Jefferson City, Missouri 65102
(314) 751-3241

Montana

Duane Robertson, Chief
Solid Waste Management Bureau
Department of Health &
Environmental Sciences
Cogswell Building, Room A201
Helena, Montana 59601
(406) 449-2821

Nebraska

Maurice W. (Bill) Sheil, Deputy
Chief
Water & Waste Management Division
Department of Environmental
Control
Box 94877 Statehouse Station
Lincoln, Nebraska 68509
(402) 471-2186

Nevada

Lewis Dodgin, Administrator
Division of Environmental
Protection
Department of Conservation &
Natural Resources
Capital Complex
Carson City, Nevada 89710
(702) 885-4670

New Hampshire

Thomas Sweeney, Chief
Bureau of Solid Waste
Department of Health and Welfare
Hazen Drive
Concord, New Hampshire 03301
(603) 271-4610

New Jersey

Lee Pereira, Administrator
Solid Waste Administration
Division of Environmental Quality
P.O. Box CN027
Trenton, New Jersey 08625
(609) 292-9120

New Mexico

Dr. Raymond Krehoff, Program Manager
Solid & Hazardous Waste Management
Program
Community Support Services Section
Health & Environment Department
P.O. Box 968, Crown Building
Santa Fe, New Mexico 97503
(505) 457-5271, ext. 282

New York

Norman H. Nosenchuck, P.E., Director
Division of Solid Waste
Department of Environmental Conservation
50 Wolf Road
Room 415
Albany, New York 12233
(518) 457-6603

William Wilkie, Assistant Director
Division of Solid Waste
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
(518) 457-6603

North Carolina

O. W. Strickland, Head
Solid & Hazardous Waste Management
Branch
Division of Health Services
Department of Human Resources
P.O. Box 2091
Raleigh, North Carolina 27602
(919) 733-2178

North Dakota

Jay Crawford, Director
Division of Environmental Waste
Management & Research
Department of Health
1200 Missouri Avenue, 3rd Floor
Bismarck, North Dakota 58505
(701) 224-2392

Ohio

Ernest Neal
Office of Hazardous Materials
Management
Ohio EPA
361 East Broad Street
Columbus, Ohio 43215
(614) 466-8934

Ken Schultz
Office of Emergency Response
Ohio EPA
361 East Broad Street
Columbus, Ohio 43215
(614) 466-8934

Oklahoma

H. A. Caves, Chief
Industrial & Solid Waste Services
Department of Health
P.O. Box 53551
1000 N.E. 10th Street, Room 803
Oklahoma City, Oklahoma 73152
(405) 271-5338

Oregon

Ernest Schmidt, Administrator
Solid Waste Management Division
Department of Environmental
Quality
P.O. Box 1760
522 S.W. 5th Avenue
Portland, Oregon 97207
(503) 229-5913

Pennsylvania

Donald Lazarchik, P.E., Director
Bureau of Solid Waste Management
Department of Environmental Resources
Fulton Building, 8th Floor
P.O. Box 2063
Harrisburg, Pennsylvania 17120
(717) 787-9870

Gary Galida, Chief
Division of Hazardous Waste Management
Bureau of Solid Waste Management
Department of Environmental Resources
Fulton Building, 8th Floor
P.O. Box 2063
Harrisburg, Pennsylvania 17120
(717) 787-7381

Puerto Rico

Santos Rohena, Associate Director
Environmental Quality Board
Office of the Governor
P.O. Box 11488
San Juan, Puerto Rico 00910
(809) 725-2062

Rhode Island

John Quinn, Jr., Chief
Solid Waste Management Program
Department of Environmental Management
204 Cannon Building
75 Davis Street
Providence, Rhode Island 02908
(401) 277-2808

Louis David, Jr., Executive Director
Rhode Island Solid Waste Corporation
39 Pike Street
Providence, Rhode Island 02903
(401) 277-2808

South Carolina

Robert Malpass, P.E., Chief
Bureau of Solid & Hazardous Waste
  Management
Department of Health &
  Environmental Control
J. Marion Simms Building
2600 Bull Street
Columbia, South Carolina 29201
(803) 758-5544

South Dakota

Kevin Tveidt
Environmental Specialist II
Solid Waste Program
Division of Environmental Health
Department of Health
Joe Foss Building
Pierre, South Dakota 57501
(605) 773-3329

Tennessee

Tom Tiesler, Director
Division of Solid Waste Management
Bureau of Environmental Services
Department of Public Health
Capitol Hill Building, Suite 326
Nashville, Tennessee 37219
(615) 741-3424

Texas

Wiley Osborne, P.E.
Hazardous Waste and Resource
  Recovery Programs Management
  Division
Bureau of Solid Waste Management
Department of Health
1100 West 49th Street
Austin, Texas 78756
(512) 458-7271

Texas (cont'd.)

Jay Snow, P.E., Chief
Industrial Solid Waste Unit
Department of Water Resources
P.O. Box 13087, Capitol Station
Austin, Texas 78711
(512) 475-2041

Utah

Dale Parker, Director
Bureau of Solid Waste Management
Division of Health
P.O. Box 2500
150 West North Temple
Salt Lake City, Utah 84101
(801) 533-4145

Vermont

Richard Valentinetti, Chief
Air and Solid Waste Programs
Agency of Environmental Conservation
State Office Building
Montpelier, Vermont 05602
(802) 828-3395

John Malter, Chief
Hazardous Materials Management Section
Agency of Environmental Conservation
State Office Building
Montpelier, Vermont 05602
(802) 828-3395

Virgin Islands

Francine Lang
Department of Cultural Affairs
Government of the Virgin Islands
Natural Resources Management Building
2nd Floor, Sub Base
St. Thomas, Virgin Islands 00801
(809) 774-6420

Virginia

William Gilley, Director
Bureau of Solid & Hazardous Waste
Management
Department of Health
Madison Building, Room 927
109 Governor Street
Richmond, Virginia 23219
(804) 786-5271

Washington

Earl Tower, Supervisor
Solid Waste Management Division
Office of Land Programs
Department of Ecology
Mail Stop PV-11
Olympia, Washington 98504
(206) 753-6883

Tom Cook, Section Head
Hazardous Waste Section
Department of Ecology
Olympia, Washington 98504
(206) 753-4276

West Virginia

Dale Parsons, Director
Solid Waste Division
Department of Health
1800 Washington Street, East
Room 520
Charleston, West Virginia 25305
(304) 348-2987

John Northeimer
Division of Water Resources
Department of Natural Resources
1201 Greenbrier Street, 2nd Floor
Charleston, West Virginia 25311
(304) 348-5935

Wisconsin

Robert Krill, Director
Solid Waste Management
Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707
(608) 266-1327

Wyoming

David Finley, Supervisor
Hazardous Waste Management
Department of Environmental Quality
Solid/Hazardous Waste Management
401 West 19th Street
Cheyenne, Wyoming 82002
(307) 777-7752

Source: National Conference of State Legislators, Hazardous Waste Management: A Survey of State Laws, 1976-1980 (Update), April 1980.

APPENDIX B-2

STATE AUTHORITIES WHICH REGULATE FINANCIAL INSTITUTIONS WHICH MAY ACT AS TRUSTEE OR ISSUE LETTERS OF CREDIT

This Appendix lists the regulatory authorities which oversee state-chartered financial institutions (banks, savings and loan associations, and credit unions). Some or all of these institutions may be empowered to act as trustee or issue letters of credit in their state. In the list below, the type of institution regulated by each state authority is indicated to the left of that agency (B = banks, including mutual savings banks; S&L = savings and loan associations; CU = credit unions).

ALABAMA

B, Kenneth R. McCartha
S&L Superintendent of Banks; Savings and Loan Commissioner
State Banking Department
651 Administration Building
Montgomery, Alabama 36104
(205) 832-6255

CU C. W. Sauls, Jr.
Bureau of Credit Unions
State Banking Department
State Administration Building
Montgomery, Alabama 36104
(205) 269-6255

ALASKA

B, Willis F. Kirkpatrick, Director
S&L Division of Banking, Securities, and Corporations
Department of Commerce
Pouch D
Juneau, Alaska 99811
(907) 465-2521

ARIZONA

B, Walter C. Madsen
S&L Superintendent of Banks
CU State Banking Department
101 Commerce Building
1601 West Jefferson Street
Phoenix, Arizona 85007
(602) 255-4421

ARKANSAS

B Beverly J. Lambert, Jr.
Bank Commissioner
Bank Department
1 Capitol Mall, 4B-210
Little Rock, Arkansas 72201
(501) 371-1117

S&L, Lee Thalheimer
CU Securities Commissioner
Arkansas Securities Department
Department of Commerce
1 Capitol Mall, 4B-206
Little Rock, Arkansas 72201
(501) 371-1011

CALIFORNIA

B Richard M. Dominguez
Superintendent of Banks
State Banking Department
Suite 750
235 Montgomery Street
San Francisco, California 94104
(415) 557-3535 [S.F.]
(213) 736-2479 [L.A.]

S&L Linda Tsao Yang, Commissioner
Department of Savings and Loan
350 Sansome Street, 2nd Floor
San Francisco, California 94104
(415) 557-3666 [S.F.]
(213) 736-2791 [L.A.]

CALIFORNIA (cont'd.)

CU Jack Carlson, Assistant Commissioner
Licensing and Examination Division
Department of Corporations
600 South Commonwealth Avenue
Los Angeles, California 90005
(213) 736-2741

COLORADO

B, Richard B. Doby
CU State Bank Commissioner
Division of Banking
325 State Office Building
Denver, Colorado 80203
(303) 866-3131

S&L David L. Paul
Savings and Loan Commissioner
Division of Savings and Loan
1525 Sherman Street, Room 110
Denver, Colorado 80203
(303) 866-2384

COMMONWEALTH OF THE NORTHERN MARIANAS ISLANDS

B, Peter Van Nam Esser
S&L Acting Attorney General
Office of the Governor
Commonwealth of the Northern
Marianas Islands
Saipan, Marianas Islands 96950
Overseas Operator (Commercial
Call 7111)

CONNECTICUT

B, Brian Woolf
S&L Acting Bank Commissioner
Department of Banking
State Office Building
165 Capitol Avenue
Hartford, Connecticut 06115
(203) 566-7580

CU Joseph D. Tirinzoni, Director
Credit Union Division
Banking Department
State Office Building, #234
Hartford, Connecticut 06115
(203) 566-7282

DELAWARE

B, John E. Malarkey
S&L State Bank Commissioner
Kirk Building
15 The Green
Dover, Delaware 19901
(302) 736-4235

FLORIDA

B, Gerald A. Lewis
CU State Comptroller
Office of the Comptroller
Capitol Building
Tallahassee, Florida 32301
(904) 488-0370

S&L Walton S. Kensey
Deputy Comptroller
Department of Banking and
Finance
Capitol Buiding
Tallahassee, Florida 32301
(904) 488-0195

GEORGIA

B Edward D. Dunn, Commissioner
Department of Banking and
Finance
2990 Brandywine Road, #200
Atlanta, Georgia 30341
(404) 393-7330

S&L, Charles W. Burge
CU Division Director
Department of Banking and
Finance
2990 Brandywine Road, #200
Atlanta, Georgia 30341
(404) 393-7330

GUAM

B Jose R. Rivera
Banking Commissioner
P.O. Box 2796
Agana, Guam 96910
(671) 472-6440

GUAM (cont'd.)

S&L Joseph Bamba
Deputy Director
Department of Revenue and Taxation
P.O. Box 2396
Agana, Guam 96910

HAWAII

B, S&L, CU Lester G. L. Wee
Executive Bank Examiner
Bank Examination Division
Department of Regulatory Agencies
P.O. Box 2054
Honolulu, Hawaii 96805
(808) 548-5855

IDAHO

B, S&L, CU Tom D. McEldowney, Director
Department of Finance
700 West State Street, 2nd Floor
Boise, Idaho 83720
(208) 334-3313

ILLINOIS

B William C. Harris, Commissioner of Banking and Trust Companies
400 Reisch Building
4 West Old State Capitol Plaza
Springfield, Illinois 62701
(217) 782-7966 [Springfield]
(312) 793-2043 [Chicago]

S&L Warren Wilson, Acting Commissioner
Savings and Loan Commission
160 North LaSalle Street, Room 526
Chicago, Illinois 60601
(312) 793-2030

CU Charles Filson
Credit Union Division
Department of Financial Institutions
160 North LaSalle Street
Chicago, Illinois 60601
(312) 793-2010

INDIANA

B, S&L William T. Ray, Director
Department of Financial Institutions
1024 State Office Building
Indianapolis, Indiana 46204
(317) 232-3960

CU S&L John E. Simmons, Supervisor
Credit Union Division
Department of Financial Institutions
1024 State Office Building
Indianapolis, Indiana 46204
(317) 232-3955

IOWA

B Thomas H. Huston
Superintendent of Banking
Banking Department
530 Liberty Building
418 Sixth Avenue
Des Moines, Iowa 50309
(515) 281-4014

S&L John Pringle, Director
Financial Institutions Division
Lucas State Office Building
Des Moines, Iowa 50319
(515) 281-5491

CU Betty Minor
Credit Union Department
300 Fourth Street, 1st Floor
Des Moines, Iowa 50319
(515) 281-8514

KANSAS

B Roy P. Britton
State Bank Commissioner
Banking Department
818 Kansas Avenue, Suite 600
Topeka, Kansas 66612
(913) 296-2266

S&L Marvin Steinert, Commissioner
Savings and Loan Department
503 Kansas Avenue, Room 220
Topeka, Kansas 66603
(913) 296-3739

KANSAS (cont'd.)

CU John B. Rucker, Administrator
Department of Credit Unions
535 Kansas Avenue, Room 1005
Topeka, Kansas 66603
(913) 296-3021

KENTUCKY

B, Morris R. Smith
S&L, Commissioner of Banking and
CU Securities
Department of Banking and
Securities
Public Protection and Regulation
Cabinet
911 Leawood Drive
Frankfort, Kentucky 40601
(502) 564-3390

LOUISIANA

B, Hunter O. Wagner
S&L Commissioner of Financial
Institutions
Department of Commerce
P.O. Box 44095, Capitol Station
Baton Rouge, Louisiana 70804
(504) 925-4660

CU Gerald Thompson, Staff Examiner
Credit Union Division
Office of Financial Institutions
Department of Commerce
P.O. Box 44095, Capitol Station
Baton Rouge, Louisiana 70804
(504) 925-4660

MAINE

B, H. Donald DeMatteis, Superintendent
S&L, Bureau of Banking
CU Department of Business Regulation
State House Station 36
Augusta, Maine 04333
(207) 289-3231

MARYLAND

B, Joseph R. Crouse
CU Bank Commissioner
Financial Regulation Division
Department of Licensing and
Regulation
1 North Charles Street,
Room 2005
Baltimore, Maryland 21201
(301) 659-6262

S&L Charles H. Brown, Jr., Director
Division of Building, Savings
and Loan Associations
Department of Licensing and
Regulation
1 South Calvert Street, Room 60
Baltimore, Maryland 21202
(301) 659-6330

MASSACHUSETTS

B, Gerald T. Mulligan, Commissioner
S&L Banks Division
Executive Office of Consumer
Affairs
State Office Building
100 Cambridge Street
Boston, Massachusetts 02202
(617) 727-3120

CU Edward Welch
Deputy Commissioner of Credit
Unions
Banks Division
Executive Office of Consumer
Affairs
100 Cambridge Street
Boston, Massachusetts 02202
(617) 727-9520

MICHIGAN

B Dr. Martha R. Seger
Commissioner of Finance
Financial Institutions Bureau
Department of Commerce
P.O. Box 30224
Lansing, Michigan 48909
(517) 373-3460

S&L Richard D. Lake, Director
Savings and Loan Division
Financial Institutions Bureau
Department of Commerce
P.O. Box 30224
Lansing, Michigan 48909
(517) 373-6940

CU Michael Fitzgerald, Director
Credit Union Division
Financial Institutions Bureau
Department of Commerce
P.O. Box 30224
Lansing, Michigan 48909
(517) 373-6930

MINNESOTA

B Michael J. Pint
Commissioner of Banks
Banking Division
Department of Commerce
Metro Square Building, 5th Floor
St. Paul, Minnesota 55101
(612) 296-2135

S&L, CU James G. Miller
Assistant Commissioner
Department of Commerce
Metro Square Building, 5th Floor
St. Paul, Minnesota 55101
(612) 296-2297

MISSISSIPPI

B, CU Glenn Smith, Commissioner
Department of Banking and Consumer Finance
P.O. Box 731
Jackson, Mississippi 39205
(601) 354-6106

S&L O. B. Marshall, Commissioner
Savings Associations
State Street Building, Suite 201
633 North State Street
Jackson, Mississippi 39201
(601) 354-6135

MISSOURI

B Kenneth W. Littlefield
Commissioner of Finance
Division of Finance
515 East High Street
Jefferson City, Missouri 65101
(314) 751-3397

S&L George McGuire, Director
Division of Savings and Loan Supervision
Department of Consumer Affairs, Regulation, & Licensing
308 East High Street, Room 303
Jefferson City, Missouri 65101
(314) 751-4243

CU Doyle Brown, Director
Division of Credit Unions
P.O. Box 1607
Jefferson City, Missouri 65102
(314) 751-3419

MONTANA

B
Gary Buchanan, Director
Department of Commerce
805 North Main Street
Helena, Montana 59601
(406) 449-3494

S&L
Kent Kleinkopf, Director
Department of Business Regulation
805 North Main Street
Helena, Montana 59601
(406) 449-3163

CU
L. W. Alke
Financial Division
Department of Business Regulations
805 North Main Street
Helena, Montana 59601
(406) 449-3163

NEBRASKA

B,
S&L
Paul J. Amen, Director
Department of Banking and Finance
301 Centennial Mall, South
Lincoln, Nebraska 68509
(402) 471-2171

CU
John Foley, Assistant Director
Department of Banking and Finance
301 Centennial Mall, South
Lincoln, Nebraska 68509
(402) 471-2171

NEVADA

B
James W. Johnson
Superintendent of Banks
Banking Division
Department of Commerce
406 East Second Street
Carson City, Nevada 89710
(702) 885-4260

NEVADA (cont'd.)

S&L,
CU
Norman T. Okada
Commissioner of Savings Associations, Credit Unions
Savings and Loan Division
Department of Commerce
406 East Second Street
Carson City, Nevada 89710
(702) 885-4259

NEW HAMPSHIRE

B
A. Roland Roberge
Bank Commissioner
Banking Department
97 North Main Street
Concord, New Hampshire 03301
(603) 271-3561

S&L,
CU
Arlan S. McKnight
Deputy Bank Commissioner
Banking Department
97 North Main Street
Concord, New Hampshire 03301
(603) 271-3561

NEW JERSEY

B
Michael Horn
Commissioner of Banking
Department of Banking
36 West State Street
Trenton, New Jersey 08625
(609) 292-3420 [Trenton]
(201) 648-6113 [Newark]

S&L
William B. Lewis
Deputy Commissioner
Division of Savings and Loan Associations
Department of Banking
36 West State Street
Trenton, New Jersey 08625
(609) 292-5494

NEW JERSEY (cont'd.)

CU John J. Minton
Consumer Credit Bureau
Department of Banking
36 West State Street
Trenton, New Jersey 08625
(609) 292-5466

NEW MEXICO

B Andrew M. Swarthout, Director
Financial Institutions Division
Commerce and Industry Department
Lew Wallace Building
Santa Fe, New Mexico 87503
(505) 827-2217

S&L Snider Campbell
Savings and Loan Supervisor
Department of Banking
Lew Wallace Building
Santa Fe, New Mexico 87503
(505) 827-2217

CU Snider Campbell
Credit Union Division
Department of Banking
Lew Wallace Building
Santa Fe, New Mexico 87503
(505) 827-2217

NEW YORK

B Muriel F. Siebert
Superintendent of Banks
Department of Banking
2 World Trade Center, 32nd Floor
New York, New York 10047
(212) 488-2310

S&L, CU Alan Cohen
Deputy Superintendent
Thrift Institution Division
Department of Banking
2 World Trade Center, 32nd Floor
New York, New York 10047
(212) 488-2380

NORTH CAROLINA

B James S. Currie
Commissioner of Banks
Department of Commerce
P.O. Box 951
Raleigh, North Carolina 27602
(919) 733-3016

S&L George King
Acting Administrator
Office of Savings and Loans
Department of Commerce
P.O. Box 27945
Raleigh, North Carolina 27611
(919) 733-3525

CU Roy High, Administrator
Credit Union Division
Department of Commerce
P.O. Box 25249
Raleigh, North Carolina 27611
(919) 829-7501

NORTH DAKOTA

B, S&L, CU L. M. Stenehjem, Jr.
Commissioner
Department of Banking and Financial Institutions
1301 State Capitol
Bismarck, North Dakota 58505
(701) 224-2256

OHIO

B Frederick E. Mills
Superintendent of Banks
Division of Banks
Department of Commerce
2 Nationwide Plaza
Columbus, Ohio 43215
(614) 466-2932

OHIO (cont'd.)

S&L Clark W. Wideman, Superintendent
Division of Building and Loan Associations
Department of Commerce
2 Nationwide Plaza
Columbus, Ohio 43215
(614) 466-3723

CU Eugene F. Conkle, Superintendent
Division of Credit Unions
Department of Commerce
2 Nationwide Plaza
Columbus, Ohio 43215
(614) 466-2384

OKLAHOMA

B Robert Y. Empie
Bank Commissioner
State Banking Department
Malco Building, 2nd Floor
4100 Lincoln Boulevard
Oklahoma City, Oklahoma 73105
(405) 521-2783

S&L, CU Wayne Osborn
Deputy Commissioner
State Banking Department
Malco Building, 2nd Floor
4100 Lincoln Boulevard
Oklahoma City, Oklahoma 73105
(405) 521-2783

OREGON

B, CU John B. Olin
Superintendent of Banks
Banking Division
Department of Commerce
Busick Building
Salem, Oregon 97310
(503) 378-4140

OREGON (cont'd.)

S&L Quintin Hess
Corporation Division, Savings and Loan Section
Department of Commerce
State Office Building
1400 S.W. 5th Avenue, Room 206
Portland, Oregon 97201
(503) 229-5530

PENNSYLVANIA

B Ben McEnteer
Secretary of Banking
Department of Banking
P.O. Box 2155
Harrisburg, Pennsylvania 17120
(717) 787-6991

S&L Walter L. Brenneman, Director
Savings Association Bureau
Department of Banking
P.O. Box 2155
Harrisburg, Pennsylvania 17120
(717) 787-7333

CU Robert Sarsfield, Director
Consumer Credit Bureau
Department of Banking
P.O. Box 2155
Harrisburg, Pennsylvania 17120
(717) 787-3717

PUERTO RICO

B Carmen Ana Culpeper
Acting Secretary of the Treasury
Commonwealth of Puerto Rico
P.O. Box 4515
San Juan, Puerto Rico 00905
(809) 725-4815

RHODE ISLAND

B, Edward L. Blue
S&L Bank Commissioner
Department of Business Regulation
100 North Main Street
Providence, Rhode Island 02903
(401) 277-2405

CU Peter Nevola
Deputy Banking Commissioner
Department of Business Regulation
100 North Main Street
Providence, Rhode Island 02903
(401) 277-2405

SOUTH CAROLINA

B, Robert C. Cleveland
CU Commissioner of Banking
State Board of Bank Control
1026 Sumter Street, Room 217
Columbia, South Carolina 29201
(803) 758-2186

S&L Samuel F. Free
Supervising Examiner, Building and Loan Associations
1026 Sumter Street, Room 217
Columbia, South Carolina 29201
(803) 758-2186

SOUTH DAKOTA

B, Glen F. Ritterbusch, Director
S&L Banking and Finance Division
Department of Commerce
State Capitol
Pierre, South Dakota 57501
(605) 773-3421

TENNESSEE

B Thomas C. Mottern
Commissioner of Banking
Department of Banking
James K. Polk State Office Building
505 Deaderick Street
Nashville, Tennessee 37219
(615) 741-2236

TENNESSEE (cont'd.)

S&L John Neff, Director
Building and Loan Division
Department of Insurance
114 State Office Building
Nashville, Tennessee 37219
(615) 741-3186

CU Oliver G. Barnett
Assistant Commissioner
Division of Credit Unions
Department of Banking
James K. Polk State Office Building
505 Deaderick Street
Nashville, Tennessee 37219
(615) 741-2236

TEXAS

B Robert E. Stewart
Banking Commissioner
Banking Department
2601 North Lamar
Austin, Texas 78705
(512) 475-4451

S&L L. Alvis Vandygriff
Commissioner
Department of Savings and Loan
1010 Lavaca Street, Box 1089
Austin, Texas 78767
(512) 475-7991

CU John P. Parsons
Credit Union Department
914 East Anderson Lane
Austin, Texas 78753
(512) 837-9236

UTAH

B, Richard L. Burt
S&L, Acting Commissioner
CU Department of Financial Institutions
10 West 3rd South, Suite 331
Salt Lake City, Utah 84110
(801) 533-5461

VERMONT

B, George A. Chaffee, Commissioner
S&L, Department of Banking and Insurance
CU State Office Building
Montpelier, Vermont 05602
(802) 828-3301

VIRGIN ISLANDS

B Henry A. Millin
Commissioner of Banking
Office of the Lieutenant Governor
Government Hill
P.O. Box 450
St. Thomas, U.S. Virgin
Islands 00801
(809) 774-2991

VIRGINIA

B Sidney A. Bailey
Commissioner of Financial
Institutions
Bureau of Financial
Institutions
701 East Byrd Street, Suite 1600
Richmond, Virginia 23219
(804) 786-3657

S&L, Lewis S. Trueheart
CU Supervisor of Savings and Loans
Suite 1600
701 East Byrd Street
Richmond, Virginia 23219
(804) 786-3658

WASHINGTON

B Michael D. Edwards
Supervisor of Banking
Banking and Small Loans Division
Deparmtent of General
Administration
General Administration Building
Olympia, Washington 98504
(206) 753-6520

WASHINGTON (cont'd.)

S&L, R. H. Lewis, Supervisor
Division of Savings and Loan
Associations
Department of General
Administration
General Administration Building
Olympia, Washington 98504
(206) 753-5597

WEST VIRGINIA

B, Phyllis Huff Arnold
S&L Commissioner of Banking
Department of Banking
State Office Building 6
Room B-406
Charleston, West Virginia 25305
(304) 348-2294

CU E. W. Turley
Deputy Commissioner
Department of Banking
State Office Building 6
Room B-406
Charleston, West Virginia 25305
(304) 348-2294

WISCONSIN

B Thomas E. Pederson
Commissioner
Office of the Commissioner of
Banking
30 West Mifflin Street
Room 401
Madison, Wisconsin 53703
(608) 266-1621

S&L R. J. McMahon
Savings and Loan Commission
131 West Wilson Street
Suite 401
Madison, Wisconsin 53702
(608) 266-1821

WEST VIRGINIA (cont'd.)

CU William Hughes, Commissioner
Credit Unions
310 North Midvale Boulevard
P.O. Box 7960
Madison, Wisconsin 53707
(608) 266-0438

WYOMING

B, S&L, CU Dwight D. Bonham
State Examiner
Office of the State Examiner
819 West Pershing Boulevard
Cheyenne, Wyoming 82202
(307) 777-7797

Source: Adapted from information from the Conference of State Bank Supervisors, National Association of State Savings and Loan Supervisors, and the National Credit Union Administration.

APPENDIX B-3

STATE AUTHORITIES WHICH REGULATE THE ISSUANCE OF SURETY BONDS AND INSURANCE

Surety companies, insurance companies, and their agents are regulated by state insurance departments. This Appendix lists the name, address, and telephone number of the insurance commissioner in each state.

ALABAMA

Tharpe Forrester
Commissioner of Insurance
Department of Insurance
453 Administration Building
64 North Union Street
Montgomery, Alabama 36130
(205) 832-6140

ALASKA

Kenneth C. Moore
Director of Insurance
Division of Insurance
Department of Commerce
Pouch D
Juneau, Alaska 99811
(907) 465-2515

AMERICAN SAMOA

Patricia G. Trammel
Commissioner of Insurance
Office of the Governor
Pago Pago, American Samoa 96797

ARIZONA

J. Michael Low
Director of Insurance
Department of Insurance
1601 West Jefferson
Phoenix, Arizona 85007
(602) 255-4862

ARKANSAS

William H. L. Woodyard, III
Insurance Commissioner
Insurance Commission
Department of Commerce
400-18 University Tower Building
Little Rock, Arkansas 72204
(501) 371-1325

CALIFORNIA

Robert C. Quinn
Insurance Commissioner
Department of Insurance
100 Van Ness Avenue
San Francisco, California 94102
(415) 557-3245

or

Robert C. Quinn
Insurance Commissioner
Department of Insurance
600 South Commonwealth Avenue
14th Floor
Los Angeles, California 90005
(213) 736-2551

COLORADO

J. Richard Barnes
Commissioner of Insurance
Division of Insurance
Department of Regulatory Agencies
106 State Office Building
Denver, Colorado 80203
(303) 866-3201

COMMONWEALTH OF THE NORTHERN MARIANAS ISLANDS

Peter Van Nam Esser
Acting Attorney General
Office of the Governor
Commonwealth of the Northern Marianas Islands
Saipan, Marianas Islands 96950
Overseas Operator (Commercial Call 7111)

CONNECTICUT

Joseph C. Mike
Insurance Commissioner
Department of Insurance
Room 425, State Office Building
Hartford, Connecticut 06115
(203) 566-5275

DELAWARE

David Elliott
Insurance Commissioner
Office of the Insurance Commissioner
21 The Green
Dover, Delaware 19901
(302) 736-4251

DISTRICT OF COLUMBIA

James R. Montgomery, III
Acting Superintendent of Insurance
Department of Insurance
614 H Street, N.W., Suite 512
Washington, D.C. 20001
(202) 727-1273

FLORIDA

Bill Gunter
Insurance Commissioner
Department of Insurance and Treasury
State Capitol, Plaza Level 2
Tallahassee, Florida 32301
(904) 488-3440

GEORGIA

Johnnie L. Caldwell
Insurance Commissioner
Office of the Comptroller General
238 State Capitol
Atlanta, Georgia 30334
(404) 656-2056

GUAM

Jose R. Rivera
Insurance Commissioner
P.O. Box 2796
Agana, Guam 96910
(671) 472-6440

HAWAII

Clifford J. Miyoi, Administrator
Insurance Division
Department of Regulatory Agencies
1010 Richards Street
Honolulu, Hawaii 98611
(808) 548-6522

IDAHO

Trent M. Woods
Director of Insurance
Department of Insurance
700 West State Street, 2nd Floor
Boise, Idaho 83720
(208) 334-2250

ILLINOIS

Philip R. O'Connor
Director of Insurance
Department of Insurance
320 West Washington Street
4th Floor
Springfield, Illinois 62767
(217) 782-4515

INDIANA

Donald H. Miller
Commissioner of Insurance
Department of Insurance
509 State Office Building
Indianapolis, Indiana 46204
(317) 232-2386

IOWA

Bruce W. Foudree
Commissioner of Insurance
Insurance Department of Iowa
State Office Building
G23 Ground Floor
Des Moines, Iowa 50319
(515) 281-5705

KANSAS

Fletcher Bell
Commissioner of Insurance
Insurance Department
State Office Building, 1st Floor
Topeka, Kansas 66612
(913) 296-3071

KENTUCKY

Daniel D. Briscoe
Insurance Commissioner
Department of Insurance
151 Elkhorn Court
Frankfort, Kentucky 40601
(502) 564-3630

LOUISIANA

Sherman A. Bernard
Commissioner of Insurance
Department of Insurance
950 North 5th Street
Baton Rouge, Louisiana 70801
(504) 342-5328

MAINE

Theodore T. Briggs
Superintendent of Insurance
Department of Business Regulation
State Office Building
Augusta, Maine 04333
(207) 289-3101

MARYLAND

Edward J. Birrane, Jr.
Insurance Commissioner
Insurance Division
Department of Licensing and Regulation
1 South Calvert Street
Baltimore, Maryland 21202
(301) 659-4027

MASSACHUSETTS

Michael J. Sabbagh
Commissioner of Insurance
Insurance Division
Executive Office of Consumer Affairs
100 Cambridge Street
Boston, Massachusetts 02202
(617) 727-3357

MICHIGAN

Nancy A. Baerwaldt
Commissioner of Insurance
Insurance Bureau
Department of Licensing and Regulations
1048 Pierpont Street
P.O. Box 30220
Lansing, Michigan 48909
(517) 374-9724

MINNESOTA

Michael D. Markman
Commissioner of Insurance
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-6907

MISSISSIPPI

George Dale
Commissioner of Insurance
Insurance Department
1804 Walter Sillers Building
P.O. Box 79
Jackson, Mississippi 39205
(601) 354-7711

MISSOURI

C. Donald Ainsworth
Director of Insurance
Division of Insurance
Department of Consumer Affairs,
Regulation, and Licensing
515 East High Street
P.O. Box 690
Jefferson City, Missouri 65102
(314) 751-2451

MONTANA

Elmer V. Omholt
Commissioner of Insurance
State Auditor's Office
Mitchell Building
P.O. Box 4009
Helena, Montana 59601
(406) 449-2996

NEBRASKA

Walter D. Weaver
Director of Insurance
Department of Insurance
301 Centennial Mall South
Lincoln, Nebraska 68509
(402) 471-2201

NEVADA

Patsy Redmond
Insurance Commissioner
Insurance Division
Department of Commerce
Nye Building
Carson City, Nevada 89710
(702) 885-4270

NEW HAMPSHIRE

Frank E. Whaland
Insurance Commissioner
Insurance Department
169 Manchester Street
Concord, New Hampshire 03301
(603) 271-2261

NEW JERSEY

James J. Sheeran
Commissioner of Insurance
Department of Insurance
201 East State Street
Trenton, New Jersey 08625
(609) 292-5363

NEW MEXICO

Vincente Jasso
Superintendent of Insurance
Insurance Department
P.O. Drawer 1269
Santa Fe, New Mexico 87501
(505) 827-2451

NEW YORK

Albert B. Lewis
Superintendent of Insurance
Insurance Department
2 World Trade Center
New York, New York 10047
(212) 488-4124

NORTH CAROLINA

John R. Ingram
Commissioner of Insurance
Department of Insurance
P.O. Box 26387
Raleigh, North Carolina 27611
(919) 733-7343

NORTH DAKOTA

J. O. Wigen
Commissioner of Insurance
Insurance Department
Capitol Building, 5th Floor
Bismarck, North Dakota 58505
(701) 224-2440

OHIO

Robert L. Ratchford
Director of Insurance
Department of Insurance
2100 Stella Court
Columbus, Ohio 43215
(614) 466-2691

OKLAHOMA

Gerald Grimes
Insurance Commissioner
Insurance Department
408 Will Rogers Memorial Building
Oklahoma City, Oklahoma 73105
(405) 521-2828

OREGON

Josephine M. Driscoll
Insurance Commissioner
Insurance Division
Department of Commerce
158 Twelfth Street, N.E.
Salem, Oregon 97310
(503) 378-4271

PENNSYLVANIA

Michael L. Browne
Commissioner of Insurance
Insurance Department
1326 Strawberry Square
Harrisburg, Pennsylvania 17120
(717) 787-5173

PUERTO RICO

Rolando Cruz
Commissioner of Insurance
Old San Juan Station
P.O. Box 3508
San Juan, Puerto Rico 00904
(809) 724-6565

RHODE ISLAND

Thomas J. Caldarone, Jr.
Insurance Commissioner
Insurance Division
Department of Business Regulations
100 North Main Street
Providence, Rhode Island 02903
(401) 277-2246

SOUTH CAROLINA

Rogers T. Smith
Chief Insurance Commissioner
Department of Insurance
2711 Middleburg Drive
Columbia, South Carolina 29240
(803) 758-3266

SOUTH DAKOTA

Henry J. Lussem, Jr.
Director of Insurance
Commerce Department
Insurance Building
Pierre, South Dakota 57501
(605) 773-3563

TENNESSEE

John C. Neff
Commissioner of Insurance
Department of Insurance
114 State Office Building
Nashville, Tennessee 37219
(615) 741-2241

TEXAS

E. J. Voorhis
Commissioner of Insurance
State Board of Insurance
1110 San Jacinto Boulevard
Austin, Texas 78786
(512) 475-2273

UTAH

Roger C. Day
Commissioner of Insurance
Insurance Department
Commissioner
326 South 5th East
Salt Lake City, Utah 84102
(801) 533-5611

VERMONT

George A. Chaffee
Commissioner of Insurance
Department of Banking and Insurance
State Office Building
Montpelier, Vermont 05602
(802) 828-3301

VIRGIN ISLANDS

Henry A. Millin
Commissioner of Insurance
Office of the Lieutenant Governor
P.O. Box 450
Charlotte Amalie
St. Thomas, Virgin Islands 00801
(809) 774-2991

VIRGINIA

James M. Thomson
Commissioner of Insurance
Bureau of Insurance
State Corporation Commission
700 Blanton Building
P.O. Box 1157
Richmond, Virginia 23209
(804) 786-3741

WASHINGTON

Dick Marquardt
Insurance Commissioner
Office of the Insurance
Insurance Building AQ21
Olympia, Washington 98504
(206) 753-7301

WEST VIRGINIA

Richard G. Shaw
Insurance Commissioner
Insurance Department
2100 Washington Street, East
Charleston, West Virginia 25305
(304) 348-3394

WISCONSIN

Susan Mitchell
Commissioner of Insurance
Office of the Insurance
Commissioner
123 West Washington Avenue
Madison, Wisconsin 53702
(608) 266-3585

WYOMING

John T. Langdon
Insurance Commissioner
Insurance Department
2424 Pioneer Avenue
Cheyenne, Wyoming 82002
(307) 777-7401

Source: Insurance Information Institute, Insurance Facts, 1981-82 Edition, pp. 73-75.

APPENDIX B-4

STATE BOARDS OF ACCOUNTANCY

Alabama State Board of Public Accountancy
424 Bell Building
Montgomery, Alabama 36104
Attn: Joseph G. Robertson
Executive Director
Telephone: (205) 265-8976

Alaska State Board of Public Accountancy
Department of Commerce
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811
Attn: Mrs. Pat Temple
Telephone: (907) 465-2548

Arkansas State Board of Accountancy
980 Plaza West
Little Rock, Arkansas 72205
Attn: William Yarbrough
Executive Director
Telephone: (501) 371-1520

Arizona State Board of Accountancy
1645 West Jefferson Street
Phoenix, Arizona 85007
Attn: Mrs. Alta F. Cushing
Administrative Assistant
Telephone: (602) 271-4134

California State Board of Accountancy
1021 O Street, Room A-596
Sacramento, California 95814
Attn: Donald O. Otten
Executive Secretary
Telephone: (916) 445-5347

Colorado State Board of Accountancy
117 State Service Building
Denver, Colorado 80203
Attn: Mrs. Evelyn Brundage
Executive Secretary
Telephone: (303) 892-2869

Connecticut State Board of Accountancy
11 Asylum Street
Hartford, Connecticut 06103
Attn: Pasquale R. Siclari, Secretary
Telephone: (203) 247-6106

Delaware State Board of Accountancy
P.O. Box 121
Newark, Delaware 19711
Attn: William Markell
Administrative Secretary
Telephone: (302) 738-2554

D.C. Board of Accountancy
Occupational and Professional Licensing Division
614 H Street, N.W., Room 109
Washington, D.C. 20001
Attn: William T. Barnes, Secretary
Telephone: (202) 727-3673

Florida State Board of Accountancy
3131 N.W. 13th Street
Gainesville, Florida 32601
Telephone: (904) 372-2032

Georgia State Board of Accountancy
166 Pryor Street, S.W.
Atlanta, Georgia 30303
Attn: C. L. Clifton
Joint-Secretary
Telephone: (404) 556-3941

Guam Terr. Board of Public Accountancy
P.O. Box 2996
Agana, Guam 96910
Attn: George Lee Palmer
Secretary

Hawaii Board of Accountancy
Department of Regulatory Agencies
P.O. Box 3469
Honolulu, Hawaii 96801
Attn: Herbert Chun
Executive Secretary

Idaho State Board of Accountancy
P.O. Box 2896
Boise, Idaho 83701
Attn: Mrs. Jeanette B. Drury
Executive Secretary
Telephone: (208) 384-2490

Illinois
Committee on Accountancy
408 Metallurgy & Mining Building
University of Illinois
Urbana, Illinois 61801
Attn: E. J. Smith, Secretary
Telephone: (217) 333-1565

Committee on Public Accountancy Comm.
Ronald E. Stackler
Director
Department of Reg. & Educ., Room 112
Capitol Building
Springfield, Illinois 62706

Indiana State Board of Public Accountancy
912 State Office Building
Indianapolis, Indiana 46204
Attn: Charles W. Stout, Secretary
Telephone: (317) 633-6619

Iowa Board of Accountancy
627 Insurance Exchange Building
Des Moines, Iowa 50309
Attn: Mrs. Thelma Crittenden
Executive Secretary
Telephone: (515) 288-8319

Kansas Board of Accountancy
325-K First National Bank Tower
Topeka, Kansas 66603
Attn: Mrs. Glenda Sherman, Secretary
Telephone: (913) 357-4113

Kentucky State Board of Accountancy
310 West Liberty
Louisville, Kentucky 40202
Attn: Bernard W. Gratzer
Executive Secretary
Telephone: (502) 589-9239

State Board of CPAs of Louisiana
1109 Masonic Temple Building
333 St. Charles Avenue
New Orleans, Louisiana 70130
Attn: Mrs. Lydia F. Parek
Executive Secretary
Telephone: (504) 522-4940

Maine Board of Accountancy
84 Harlow Street
Bangor, Maine 04401
Attn: Lawrence E. Parker, Jr.
Secretary
Telephone: (207) 942-6702

Maryland Board of Public Accountancy
One South Calvert Building, 8th Floor
Baltimore, Maryland 21202
Attn: Mrs. Margaret M. Wilmer
Executive Secretary
Telephone: (301) 383-2134

Massachusetts Board of Public Accountancy
100 Cambridge Street, Room 1524
Boston, Massachusetts 02202
Attn: Rocco J. Antonelli
Executive Secretary
Telephone: (617) 727-3078

Michigan Board of Accountancy
Department of Licensing & Regulation
1116 South Washington Avenue
Lansing, Michigan 48926
Attn: Wayne D. Cunningham
Administrative Secretary
Telephone: (517) 373-0682

Minnesota State Board of Accountancy
1102 Wesley Temple Building
Minneapolis, Minnesota 55403
Attn: Leonard A. Rapaport
Secretary-Treasurer
Telephone: (612) 339-2781

Mississippi State Board of Public Accountancy
4915 I-55 North
Bailey & Bailey Plaza, Suite 208B
Jackson, Mississippi 39206
Attn: John W. Morgan, Secretary
Telephone: (601) 981-3933

Missouri State Board of Accountancy
P.O. Box 613
Jefferson City, Missouri 65101
Attn: Mrs. Ruth Woodson
Executive Secretary
Telephone: (314) 751-2767

Montana State Board of Public Accountancy
Lalonde Building, Room 7
Helena, Montana 59601
Attn: Joan DeBorde
Administrative Assistant
Telephone: (406) 449-3737

Nebraska State Board of Public Accountancy
100 North 56th Street, Suite 314
Lincoln, Nebraska 68504
Attn: Ray A. C. Johnson, Secretary
Telephone: (402) 466-8481

Nevada State Board of Accountancy
290 South Arlington Avenue
Reno, Nevada 89501
Attn: Mrs. Marguerite M. Callahan
Executive Secretary
Telephone: (702) 786-0231

New Hampshire Board of Accountancy
One Elm Street
Milford, New Hampshire 03055
Attn: Mervin D. Newton
Secretary-Treasurer
Telephone: (603) 673-6500

New Jersey Board of CPAs
1100 Raymond Boulevard, Room 420
Newark, New Jersey 07102
Attn: Mrs. Mary R. Lannon
Secretary
Telephone: (201) 648-3240

New Mexico State Board of Public Accountancy
6101 Marble, N.E., Suite 7 & 8
Albuquerque, New Mexico 87110
Attn: L.A.B. Parker, Executive
Secretary
Telephone: (505) 265-7709

New York State Board for Public Accountancy
State Education Department
Room 1839, Twin Tower Building
99 Washington Avenue
Albany, New York 12210
Attn: Robert G. Allyn
Executive Secretary
Telephone: (518) 474-3836

North Carolina State Board of CPA Examiners
P.O. Box 2248
209 Lennox Building
Chapel Hill, North Carolina 27514
Attn: Mrs. Katherine D. Guthrie
Executive Director
Telephone: (919) 968-4449

North Dakota State Board of Accountancy
Box 8104 University Station
Grand Forks, North Dakota 58201
Attn: R. D. Koppenhaven
Secretary-Treasurer
Telephone: (701) 777-2923

Accountancy Board of Ohio
180 East Broad Street, Suite 414
Columbus, Ohio 43215
Attn: Dan Joseph, Jr. Director
Telephone: (614) 466-4135

Oklahoma State Board of Public Accountancy
265 West Court
Oklahoma City, Oklahoma 73105
Attn: Mrs. Retha Duggan
Executive Assistant
Telephone: (405) 521-2397

Oregon Board of Accountancy
Labor & Industries Building, 14th Floor
Salem, Oregon 97310
Attn: Mrs. Helen Garrett, Administrator
Telephone: (503) 378-4181

Pennsylvania State Board of Examiners of Public Accountants
279 Boas Street, Room 406
Harrisburg, Pennsylvania 17120
Attn: Irving Yaverbaum, Secretary
Telephone: (717) 787-3024

Puerto Rico Board of Accountancy
Box 3271
San Juan, Puerto Rico 00904
Attn: Justino Valles
Administrative Officer
Telephone: (809) 725-0142

Rhode Island Board of Accountancy
1429 Warwick Avenue
Warwick, Rhode Island 02888
Attn: Howard J. Swanson, Secretary
Telephone: (401) 463-8900

South Carolina Board of Accountancy
P.O. Box 11376
Columbia, South Carolina 29211
Attn: John S. Herin, Administrator
Telephone: (803) 777-3178

South Dakota Board of Accountancy
141 North Main Avenue, Suite 308
Sioux Falls, South Dakota 57102
Attn: John E. Page, Executive Director
Telephone: (605) 336-1858

Tennessee State Board of Accountancy
1717 West End Building, Suite 300-A
Nashville, Tennessee 37203
Attn: Clyde R. Watson, Secretary
Telephone: (615) 741-2550

Texas State Board of Public Accountancy
940 American Bank Tower
221 West Sixth Street
Austin, Texas 78701
Attn: Mrs. Pauline Thomas
Administrative Director
Telephone: (512) 451-0241

Utah Committee for Public Accountancy
330 East Fourth South Street
Salt Lake City, Utah 84111
Attn: Floy W. McGinn, Director
Telephone: (801) 328-5711

Vermont State Board of Accountancy
Two Linden Street
Brattleboro, Vermont 05301
Attn: James C. Plumpton, Secretary
Telephone: (802) 257-0551

Virginia State Board of Accountancy
Department of Professional and
Occupational Registration
P.O. Box 1-X
Richmond, Virginia 23202
Attn: Mrs. Ruth J. Herrink
Secretary-Treasurer
Telephone: (804) 786-2161

Virgin Islands State Board of Accountancy
Box 511, Charlotte Amalie
St. Thomas, Virgin Islands 00801
Attn: Ezra A. Gomez, Secretary

Washington State Board of Accountancy
210 East Union, Suite H
Olympia, Washington 98504
Attn: Mrs. Helen Z. Peterson
Administrative Assistant
Telephone: (206) 753-2585

West Virginia Board of Accountancy
1800 Washington Street, East, Room 463
Charleston, West Virginia 25305
Attn: Willard H. Erwin, Jr., Secretary
Telephone: (304) 348-3557

Wisconsin Accounting Examining Board
201 East Washington Avenue
Madison, Wisconsin 53702
Attn: James E. Bower, Secretary
Telephone: (608) 266-3020

Wyoming State Board of Accountancy
Capitol Complex
200 W. 25th Street
Cheyenne, Wyoming 82002
Attn: Mrs. R. Marion Davis,
Executive Secretary
Telephone: (307) 777-7551

Source: American Institute of Certified Public Accountants.